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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1970

70-5025

~~No. 5940~~

FRANCIS HAINES,

Petitioner,

—v.—

OTTO J. KERNER, FORMER GOVERNOR, STATE OF ILLINOIS, ET AL.

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1970
CERTIORARI GRANTED MARCH 8, 1971

Supreme Court of the United States

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

CV 68-83-D

Jury demand date: July 1, 1968

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, Former Governor, State of Illinois, Chicago, Illinois; ROSS V. RANDOLPH, Director of Public Safety, State of Illinois, Springfield, Illinois; MAX P. FRYE, Warden; LEWIS C. LENCE, Assistant Warden; JEFFIE BIGGS, Assistant Warden; PAUL V. SYMPSON, Senior Guard Captain; RUSSELL LENCE, Guard Captain; E. ROGERS, Guard Lieutenant; DONALD GENTSCH, Record Clerk; WILLIAM SHEETS, Commissary Officer; PAUL T. DUNCAN, Guard, all of the Illinois State Penitentiary, Menard, Illinois, 62259, DEFENDANTS

For Plaintiff:

Francis Haines, Pro Se, Register No. 16348, Illinois State Penitentiary, Menard, Ill. 62259

For Defendants:

Jeffie Biggs, Paul V. Sympson, & Russell Lence, Otto J. Kerner, Ross V. Randolph, Max P, Frye, Lewis Lence, E. Rogers, Donald Gentsch, William Sheets and Paul Duncan: John Sorrentino, Asst. Atty. Gen., William G. Clark, Atty. Gen., State of Illinois, 160 N. LaSalle St., Chicago, Illinois 60601

Statistical Record	Costs	Date
J.S. 5 mailed July, 1968	Clerk Forma Pauperis	2/13/69
J.S. 6 mailed	Marshal	
Basis of Action: Civil Rights-T.42, USC, Secs. 1981, 1983 & 1985.	Docket fee	
	Witness fees	
Action arose at: Menard, Ill.	Depositions	

Name or Receipt No.	Rec.	Disb.	
F. Haines Notice Appeal	5.00	5.00	GS 2411 CD# 29D 2/17/69

Date	Proceedings
1968	
June 11	Petition to file civil complaint in forma pauperis received and handed to the Court for consideration.
July 1	Motion for Leave to File and Prosecute in Forma Pauperis and Other Relief, filed.
July 1	Order Granting Motion for Leave to File and Prosecute in Forma Pauperis, entered. (WISE, J) Certified copies to Francis Haines, Atty. General William Clark.
July 1	Complaint filed.
July 1	Motion for Appointment of Guardian Ad Litem filed.
July 1	Summons issued and mailed for service, together with copy of Order showing case filed in forma pauperis.
July 10	Marshal's return of service made on July 3, 1968 filed. (Service not made on defendants Kerner and Randolph)
July 15	Marshal's return of service on defendant Otto J. Kerner, same served 7/8/68.

Date	Proceedings
1968	
July 23	Motion to Dismiss and Supporting Memorandum, on behalf of Defendants Otto J. Kerner, Ross V. Randolph, Max P. Frye, Lewis Lence, E. Rogers, Donald Gentsch, William Sheets and Paul Duncan, filed.
Aug. 2	Motion for Leave to Proceed on Used Paper, filed.
Aug. 2	Notice and Proof of Service of filing answering brief, filed.
Aug. 2	Answering Brief on Motion to Dismiss, filed.
Aug. 2	Notice and Proof of Service of Ancillary Petition for Writ of Injunction, filed.
Aug. 2	"Motion for Leave to File and Prosecute Ancillary Petition for Injunction in Forma Pauperis and Upon Used Paper Such as This" filed, with forma pauperis affidavit.
Aug. 2	Copies of all above pleadings received and forwarded to Attorney General William G. Clark, Springfield, Ill.
Sept. 6	Marshal's return on service of summons, service made on Ross V. Randolph, Director of Public Safety, State of Ill.; on 9/4/68.
Oct. 25	Notice and Proof of Service filed.
Oct. 25	Motion for Default Judgment Against Named Defendants, with Affidavit & Memo., filed. Defts. named in Motion are Jeffie Biggs, Paul Sympson & Russell Lence.
Oct. 25	Copies of above Notice, Motion, Affidavit and Memo. received and forwarded to Attorney General William G. Clark.
Nov. 8	Motion to Amend Motion to Dismiss filed. Motion to Dismiss should also be the motion of defendants Biggs, Sympson and Lence.

Date	Proceedings
1968	
Nov. 8	Order Denying Motion for Default and Allowing Motion to Amend to Dismiss, entered. (WISE, J.) IT IS HEREBY ORDERED that the motion for default be, and is hereby denied; IT IS HEREBY FURTHER ORDERED that the motion to amend motion to dismiss be, and is hereby, allowed; IT IS HEREBY FURTHER ORDERED that the plaintiff is granted an addiitonal 20 days to file any additional or supplemental brief to the motion to dismiss, and the defendants are to answer said brief within 20 days after the filing of any supplemental brief. Certified copies to plaintiff and to William G. Clark, Atty. General of Ill.
Nov. 15	Notice, Proof of Service, and Motion for Leave to File Interrogatories Against Certain named Defendants pursuant to Rule 33, Federal Rules of Civil Procedure, and Motion for Leave to File Admissions against Certain Named Defendants, pursuant to Rule 36, Federal Rules of Civil Procedure, with affidavit attached, filed.
Nov. 15	Copy of Notice, Proof of Service, and above motions and affidavit mailed to Wm. G. Clark, Attorney General of the State of Illinois
Nov. 20	Motion for Leave to Proceed on Used Papers and affidavit, filed.
Nov. 20	Supplemental Brief in Opposition to the Motion to Dismiss, filed.
Nov. 20	Notice and Proof of Service of Motion, Affidavit and Supplemental Brief, filed.
Nov. 20	Mailed copies of Notice and Proof of Service, Motion and Affidavit, and Supplemental Brief, to Wm. G. Clark, Attorney General of the State of Illinois

Date	Proceedings
1968	
Nov. 21	Request for Admissions under Rule 36, Federal Rules of Civil Procedure and Request for Interrogatories pursuant to Rule 33, Federal Rules of Civil Procedure, directed to Defendant Ross V. Randolph, filed.
Nov. 21	Request for Admissions pursuant to Rule 36, Federal Rules of Civil Procedure and Request for Interrogatories pursuant to Rule 33, Federal Rules of Civil Procedure, directed to Defendant Max P. Frye, filed.
Nov. 21	Request for Admissions Pursuant to Rule 36, Federal Rules of Civil Procedure, and Request for Interrogatories pursuant to Rule 33, Federal Rules of Civil Procedure, directed to Defendant Russell Lence, filed.
Nov. 21	Request for Admissions pursuant to Rule 36, Federal Rules of Civil Procedure, and Request for Interrogatories pursuant to Rule 33, Federal Rules of Civil Procedure, directed to Defendant William Sheets, filed.
Nov. 21	Request for Admissions pursuant to Rule 36, Federal Rules of Civil Procedure and Request for Interrogatories pursuant to Rule 33, Federal Rules of Civil Procedure, directed to Defendant Donald Gentsch, filed.
Dec. 9	Motion for Leave to Present Slip Opinion in Wright v. McMann, No. 31023 . . . . and Short Discussion of Pertinent Provisions Thereof, filed, with Notice and Proof of Service.
Dec. 9	Affidavit in Support of Motion, filed. Copy of Motion and Affidavit and Notice sent to Atty. General William G. Clark, at Chicago, Illinois.
Dec. 20	Order entered December 19, 1968, allowing Motion to Dismiss and dismissing cause of action (WISE, J) Copies to Plaintiff and to Attorney General, Chicago, Ill. JS #6 issued.

Date	Proceedings
1969	
1/ 7/69	Notice and Proof of Service, Motion to Reconsider and Set Aside the Order of the Court, entered December 19, 1968, Dismissing the Complaint Upon Allowance of Defendants Motion to Dismiss, filed. Copy mailed to Attorney General, Chicago, Ill.
1/ 8/69	Order Denying Motion for Rehearing entered—Ordered that the motion for reconsideration and setting aside of order dismissing complaint entered Dec. 20, 1968 is denied (Wise, J.) Copies mailed to Mr. Haines and Attorney General, Chicago, Ill.
1/31/69	Motion for Leave to File and Prosecute Appeal in Forma Pauperis, Pursuant to Title 28, USC, Sec. 1915(a) and Rule 75(a), FECP, with Affidavit in Forma Pauperis in Support of Motion for Allowance of Appeal in Forma Pauperis, filed and handed to the Court for consideration, with Notice and Proof of Service, Directions to the Clerk for Service of Notice of Appeal, Notice of Appeal, and Praecipe for Transcript of Record on Appeal attached thereto.
2/ 4/69	Order Denying Leave to Appeal in Forma Pauperis, entered. (WISE, J) Certified copies to Mr. Haines and to Attorney General of State of Illinois.
2/13/69	Notice of Appeal filed.
2/13/69	Praecipe for Transcript of Record on Appeal filed.
2/13/69	Directions to the Clerk for Service of Notice of Appeal filed.
2/13/69	Notice and Proof of Service, sent by Plaintiff Frances Haines, filed.
2/13/69	Clerk's Certificate of Mailing Notice of Appeal, filed.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS.

Civil Action No. CV68-83D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF.

vs.

OTTO J. KERNER, Former Governor, State of Illinois, Chicago, Illinois; ROSS V. RANDOLPH, Director of Public Safety, State of Illinois, Springfield, Illinois; MAX P. FRYE, Warden; LEWIS C. LENCE, Assistant Warden; JEFFIE BIGGS, Assistant Warden; PAUL V. SYMPSON, Senior Guard Captain; RUSSELL LENCE, Guard Captain; E. ROGERS, Guard Lieutenant; DONALD GENTSCH, Record Clerk; WILLIAM SHEETS, Commissary Officer; PAUL T. DUNCAN, Guard, all of the Illinois State Penitentiary, Menard, Illinois, 62259, DEFENDANTS

COMPLAINT—filed July 1, 1968

(Trial by Jury Demanded of All Issues so Triable)

Francis Haines, complaining of the defendants states:

The action arises under the Constitution and Laws of the United States, and in particular as follows: United States Constitution, Eighth and Fourteenth Amendments, thereto; United States Code, Title 42, Sections 1981, 1983 and 1985(2); and the decisions of the United States Supreme Court in construing them.

The Jurisdiction of this Court is specifically invoked as follows:

A— To recover damages for the deprivation, under color of State Law, of rights, privileges and immunities guaranteed and secured by the Constitution and Laws of the United States, under the guise of regulation, cus-

tom or usage, pursuant to Title 28 U. S. C. Section 1343 (3) and Title 42 U. S. C. Section 1983.

B— To recover damages for the deprivation, by reason of a conspiracy, of rights, privileges and immunities, guaranteed and secured by the Constitution and Laws of the United States, pursuant to Title 28 U. S. C. Section 1343(1) and Title 42 U. S. C. Section 1985(2)

C— Absent diversity of citizenship and jurisdictional amount, pursuant to:

Hague v. C. I. O., 307 U. S. 496;
Douglas v. Jeanette, 319 U. S. 157.

D— To inquire into prison rules and the internal discipline of the Illinois State Penitentiary, Menard, Illinois.

Cooper v. Pate, 378 U. S. 546;
Cooper v. Pate, (CCA 7) 382 F. 2nd 519;
Wright v. McCann, (CCA 2) #31023, F. 2nd.
Gordon v. Garrson, (E. D. Ill.) 77 Fed. Supp. 477;
Application of Middlebrooks, (D.C. Cal.) 88 Fed. Supp. 943;
Cf. United States v. Jones, (CCA 5) 207 F. 2nd. 785.

E— Of the defendants residing without the Eastern District of Illinois, Title 28 U. S. C. Section 1393(2)

F— For a declaration of the rights privileges and immunities of the plaintiff, Title 28 U. S. C. Section 2201.

The cause of action has arisen in the past two years.

Plaintiff is a natural born citizen of these United States, born at Blairstown, Iowa, June 1, 1902; and has served in the United States Army as such, Army Serial Number 721, 839; and is now confined in the Illinois State Penitentiary, Menard, Illinois, as No. 16348.

The defendants are officers and employees of the State of Illinois, respectfully as follows:

A— The defendant Kerner, between the dates of March 10 and May 19, 1968, was duly elected Governor of the State of Illinois.

B— The defendant Randolph is the duly appointed Director of Public Safety of the State of Illinois.

C— The defendants Frye, Lewis C. Lence, Jeffie Biggs, Paul V. Sympson, Russell Lence, E. Rogers, Donald Gentsch, William Sheets, and Paul T. Duncan, are employees of the Department of Public Safety of the State of Illinois and in the capacities set forth in the title hereof.

D— The defendants Max P. Frye, Lewis C. Lence, Jeffie Biggs, Paul V. Sympson and Donald Gentsch, are members of the Progressive Merit System of the Illinois State Penitentiary, Menard, Illinois, and in full charge of the application thereof.

At all times hereinafter complained of the defendants were acting in their official capacities, and under color of state law, regulation, custom or usage, and by virtue of their official positions, deprived the plaintiff of his rights, privileges and immunities guaranteed and secured by the Constitution and Laws of the United States, and the decisions of the United States Supreme Court in construing them.

That at divers times subsequent to and including March 10, 1968, the defendants herein conspired, each with the others or adopted the acts of the others, for the purpose of impeding, hindering, obstructing and defeating the due course of Justice in the State of Illinois, with intent to deny the plaintiff of his rights, to be treated in accordance with due process of law and to deny him the equal protection of the law, that the acts set forth hereinafter, in accordance with the said conspiracy, were willful and malicious, and designed to discriminate against the plaintiff and deprive him of his rights, privileges and immunities guaranteed and secured by the Constitution and Laws of the United States, and in particular as follows:

A— To be free from Cruel and Unusual Punishments as secured by the Eighth Amendment, and Section 1, Fourteenth Amendment, United States Constitution.

B— To Due Process of Law as secured by the Constitution of the United States, Section 1, Fourteenth Amendment.

C— To Equal Protection of the Laws as secured by the Constitution of the United States, Section 1, Fourteenth Amendment.

D— To the full and equal benefits of all laws and proceedings for the security of persons as guaranteed and secured by Title 42 U. S. C. Section 1981.

E— To be free from deprivation, under color of state law, regulation, custom or usage, of fights, privileges and immunities guaranteed and secured by the Constitution and Laws of the United States, Title 42 U. S. C. Section 1983.

F— To be free from deprivation, by reason of any conspiracy, or rights, privileges and immunities guaranteed and secured by the Constitution and Laws of the United States, and in particular the right to the due course of Justice in the State of Illinois, Title 42 U. S. C. Section 1985(2).

C— The right to be tried by due process of law, and if found guilty, to be sentenced and punished in accordance with the Laws of the State of Illinois, Screws v. United States, 325 U. S. 91; Williams v. United States, 341 U. S. 97.

The Constitution of the State of Illinois, (1870) Article II, guarantees the following as being within the due course of Justice in the State of Illinois.

"2. No person shall be deprived of life, liberty or property without due process of law.

"3. The right to trial by jury as heretofore enjoyed, shall remain inviolate.

"8. No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases where the punishment is by fine, or imprisonment otherwise than in the penitentiary.

"9. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation; to have a copy thereof; and to have

process to compel the attendance of witnesses in his behalf; and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

"10. No person shall be compelled in any criminal case to give evidence against himself, or to be put in jeopardy twice for the same offense."

The said constitutional provisions in Illinois are supplemented by the provisions of the Illinois Revised Statutes, 1967, Criminal Law and Procedure, Chapter 38, Division III, Title I to VII, pages 1590 to 1613, governing trial procedures in criminal cases.

The Illinois Revised Statutes, 1967, Chapter 38, Division II, Article 12.1 Sections 2 to 6, defines the crime of Assault and Battery and sets the legal penalties therefore.

The Illinois Revised Statutes, 1967, Chapter 38, Division I, Article 25-1, Sections 25-1(3) states that an assembly of two or more persons without authority of the law, for the purpose of exercising correctional powers over any supposed violation of the law, constitutes mob action and is a misdemeanor.

By the Act of June 29, 1885, it was provided that the several Courts of Will County, Illinois, had cognizance of all crimes committed in the Illinois Penitentiary. Such act was prior to Menard, but subsequently the Illinois Revised Statutes, 1949, Chapter 108, Paragraph 108, gave cognizance to courts in other counties in which contained penitentiaries.

The Legislative History of the use of Solitary Confinement in Illinois as a means of penal discipline is as follows:

A— Act of January 6, 1827:

"Sec. 13: The said Warden, and other officers, agents, and servants, shall each of them have power to order any convict to solitary confinement, for misbehavior, refractory conduct, idleness, negligence, in performing their daily task, impertieent or improper language, or breach of any of the rules and regulations; and shall immediately report the same to the arden,

and the Warden shall punish such convict therefore, by solitary confinement, for any term not exceeding thirty days ,or many discharge the said convict from the imprisonment ordered by the said Warden, officer, agent or servants."

B— By an Act of 1867, Sessions Laws, page 31, Illinois Statutes 1868, Section 37, Chapter 81, it was provided in the event that unusual punishment was to be inflicted it should be solitary confinement. Such reads:

"It shall not be lawful in said penitentiary to punish any convict by whipping in any case whatsoever, if, in the opinion of the Warden, it shall be deemed necessary in that case to inflict unusual punishment in order to produce the entire obedience and submission of any convict, said Warden shall have power to punish said convict by solitary confinement in a dark cell and deprivation of food except bread and water until such convict shall be reduced to submission and obedience."

C— By the Act of July 1, 1871, Illinois Revised Statutes, 1925, Chapter 108, Section 37, it was provided:

"37. It shall not be lawful in said penitentiary to use any cruel or unusual mode of punishment or to punish any convict by whipping whatsoever."

By the provisions of the Illinois Revised Statutes, 1949, Chapter 108, Paragraphs 76 to 79, to prison doctor was required to examine all convicts regarding their physical condition and regarding their ability to work and to classify them into three classes or grades, first, second and third, nothing being said therein regarding disciplinary powers.

The current Illinois Revised Statutes, 1967, Chapter 108 paragraphs 76 to 79, also provide for classification into three classes or grades, first, second and third.

On or about April 2, 1968, the defendant Gentach looked at such above provisions and slammed the book shut before plaintiff.

The defendants Frye, Lewis C. Lance, Jeffie Biggs, Paul V. Sypmpson and Donald Gentsch, comprise the

Membership of the Progressive Merit System Board of the Illinois State Penitentiary, Menard, Illinois, and all that is contained in the current Rule Book pertaining to such is as follows: (Good Time table omitted.)

"PROGRESSIVE MERIT SYSTEM.

"A 'Progressive Merit System' for the purpose of encouraging and rewarding good conduct and industry in the Division of the Illinois State Penitentiary has been adopted by the Department of Public Safety.

"Under this system prisoners serving indeterminate sentences who are denied parole and their cases continued to future dates for further consideration may by good conduct and industry earn 'Merit Time' and thus advance the dates of review of their cases.

"In the event you receive a demotion you will lose a portion or all of your merit time earned towards a dated set.

"Merit Time is applied only to those continuances handed down by the Parole Board specifying a certain date. You cannot earn merit time on an undated continuance.

PROMOTIONS.

"In the penitentiary there is a grade system consisting of three grades. These grades are "A" "B" and "C".

"On admission the inmate is placed in Grade "A" and while in Grade "A" may earn merit time. If an Inmate's behavior is unsatisfactory he may be demoted to Grade "C" which will result in a loss of privileges for a period of one year and cannot earn merit time while in Grade "C". In the event of demotion you must spend one year in "C" Grade, you are promoted to "B" Grade where you remain for one year before going to "A" Grade. No merit time can be earned in Grade "C". You may earn five

days per month in "B" Grade and ten days per month in "A" Grade.

"In the event an inmate receives a dated continuance from the Parole Board his next board date will be computed according to the following chart.'"

The facts of which plaintiff complains are as follows:

On March 10, 1968, plaintiff and two other inmates, Moore No. 30925 and Doherty No. 33371, were assigned to what is known in Menard, as the Inside Yard Gang. The defendant Paul T. Duncan was officer in charge of such assignment.

Plaintiff and these other two inmates engaged in an argument in which it seemed to plaintiff that Inmate Moore was urging and inciting inmate Doherty against plaintiff. Several times it was said by both of these inmates that the "Young Blood" was taking over and that the "Old Blood like the plaintiff was done. Both of these men are approximately thirty years of age.

Plaintiff is sixty-six (66) years of age his next birthday and is approximately thirty (30) percent permanently disabled due to the following foot injuries: Left foot—2nd. 3rd and 4th Cuboid Bones and 3rd Metatarsal fractured, which resulted in an Ankylosis in the Cuboid Bones. Right foot—vertical fractures in the heel bones, discernable only by an X-Ray in a specific position of the foot. He was awarded compensation in a hearing before the Illinois Industrial Commission for these injuries.

After this argument had proceeded for a time plaintiff obtained an Inmate Pass from the Defendant Duncan to go and inspect a pile of cinders to see if it had thawed sufficiently or whether a pick was needed to breaking and loading on a truck. He also took a No. 2 long handled shovel.

He inspected the pile of cinders and found it needed a pick and returned to the Yard Gang Shack. Upon his return he inspected the shovel and found it had a clod of dirt in the heel. Immediately outside the door he banged the shovel on the concrete and dislodged this dirt.

When he entered the Yard Gang Shack Doherty and Moore resumed this argument and during this period Moore was very emphatic that the "Young Blood" such as him were taking over and that the plaintiff had better watch out or he would be hurt. Plaintiff told both of these men that they could hop on at any time they felt like it and he had never run and did not intend to start then. At this time the plaintiff was in the Yard Gang Showers, which is about Fifteen (15) Feet long and four (4) feet wide, with a concrete block wall on one side of it about three (3) feet high.

After plaintiff entered the bath room these other inmates approached him in a threatening manner and resumed the argument. One of the two men asked him if he wanted to start something, plaintiff thinks it was Doherty. He then hit Doherty on the head with the shovel, inflicting cuts on his head.

When plaintiff hit Doherty Moore grabbed the shovel and threw it out from the bath room and then plaintiff and Moore had a scuffle. At this time defendant Duncan became aware of the trouble. He had been in the office, about fifteen (15) feet away and called out. This Moore broke off the scuffle and said what is the matter with you old man.

Defendant Duncan took Doherty into the back room to wash the blood from Doherty's head and during the periods of his absence Moore kept making dire and foreboding threats of the consequences of plaintiffs acts. He was told that he could resume the matter any time he choose.

Inmate Orlando, No. 34527, witnessed these eevnts subsequent to plaintiff's hitting the shovel on the concrete.

Subsequently the defendant Rogers came and walked plaintiff to what is known in the institutional vernacular as the hole or solitary confinement, which in recent years the officials call isolation.

Defendant Rogers took plaintiff before the defendant Russell Lence who was disciplinary officer that day. Plaintiff refused to explaine his actions other than to say he had hit Doherty with the shovel. He was locked

in an Isolation Cell until a report could be had from defendant Duncan.

When this report was had defendants Lence and Rogers called plaintiff before them again and read the report to him. Plaintiff objected to statements of Duncan that he had hit the shovel on the Yard Gang Shack floor and refused to discuss statement of Duncan that he had engaged with the other two men. Defendant Lence wanted to know why the plaintiff would hit Doherty and stated that it had been twenty-eight (28) years since plaintiff had been in the hole. When plaintiff refused to talk to these officers he was given fifteen (15) days punishment, from March 10, to March 25, 1968.

This isolation, hole or solitary confinement consists of dark cells and the only difference plaintiff could see in the intervening twenty-eight (28) years between his trips to such were as follows: he was given three (3) blankets instead of two (") to sleep on a concrete floor; there had been a toliet installed instead of toilet buckets formerly used; that he received (2) slices of bread every morning and evening, along with a noon meal, instead of the four (4) slices of bread formerly received.

There was no articles of hygiene furnished him and his false teeth became so rancid he had to leave them out. No towel or soap was furnished.

On March 25, 1968, plaintiff was taken from the hole and taken to the cell house to pack up to move. He then received a grade demotion slip which stated he had been demoted to "C" Grade, which was dated March 12, 1968 for his violation of the rules. No hearing before the Progressive Merit Board was held.

On March 27, 1968, plaintiff went to the inmates Commissary to get needed articles and was told by inmate Bond, No. 32163, that he could not trade because he was in "C" Grade, that he had traded on March 6, 1968. When plaintiff said he would take the matter to the courts he was laughed at and told to go ahead.

This inmate Bond is the defendant Sheets so-called right hand man and he places inmates Balances on their Commissary Slips although the rules, Rule 5, Commissary Rules, states in part as follows:

"You will file past to Commissary Officer with your order in your hand, and after he has placed your balance on same, put your prints on the order in two places. * * *"

This is all the notification that plaintiff has received from any officials that he had lost his privileges and to date the priveleges lost are not known to him.

Plaintiff later wrote a letter of complaint to the defendant Lewis C. Lence, stating that he had a definite sentence of life, that according to the Progressive Merit System such only applied to indeterminate sentences; that he could not earn any good time or merit time thereunder and that he though he should not be punished under a system which contained no benefits for him.

Several days later, on or about April 2, 1968, defendant Gentsch called plaintiff to his office in regards to the letter to Defendant Lence. At this time plaintiff again objected to the application of the Merit System Rules against him, stating that he had served twenty-eight (28) and when they gave him good time for such period he would accept "C" Grade.

Defendant Gentsch pulled out a Ledger Book, fourteen (14) inches long, eight and a half (8½) inches wide and about three and a half (3½) inches thick, and opened it to a rule which he read and which stated any inmate could be put in "C" Grade. This rule is not in the inmates rule book.

Plaintiff objected that the provisions of the Illinois Revised Statutes, Chapter 108, Paragraphs 76 to 79 which required classification into three classes or grades. First, Second and Third. The defendant opened a statute to such sections to such law and plaintiff called his attention to such. He closed the book before plaintiff could read the context.

Plaintiff said he would take the matter to the courts and defendant Gentsch humorously told him to do so.

Plaintiff has never been officially told by any officials of the Illinois State Penitentiary, Menard, Illinois, of the privelegs he was to be deprived of by his demotion to "C" Grade other than that by inmate Bond and there is nothing in the Rule Book concerning such.

Within the past two (2) years four inmates of the Illinois State Penitentiary, Menard, Illinois, have been tried for murder committed in the Inmates Dining Room, indicted in Randolph County and trial held in Sangamon County, Illinois; at least one (1) inmate was tried in Randolph County for a Prison Escape; and each of the said defendants have full knowledge of such trials.

The plaintiff has been deprived of his right to trial by the due course of Justice in the State of Illinois, which requires in part; notice and cause of the accusation; trial before a court of competent jurisdiction; right to aid of counsel; trial before an impartial jury; a sentence according to the laws of the State of Illinois; the right to make a defense against the charge; the right of an appeal if he so desires; and the acts of the defendants were under the color of state law, regulation, custom and usage and were in concert for the end and purpose of discriminating against him and to coerce him with punishments not permitted by the Laws of the State of Illinois.

The plaintiff has been punished with the imposition of Cruel and Unusual Punishment not permitted by the Laws of Illinois by the said defendants acting under color of state law, custom, regulation or usage, and such acts were in concert for the end and purpose of discriminating against him.

The plaintiff has been arbitrarily classified by imposition of the so-called Progressive Merit System, under which he can receive no benefits, and which is not listed in any of the Penal Provisions contained in the Laws of Illinois as a punishment for crime, and that the acts of the said defendants were under color of state law, custom, regulation and usage, and such acts were in concert for the end and purpose of depriving him of due process and equal protection of the laws.

The plaintiff suffered great physical anguish and pain due to his feet and circulatory trouble in his legs due to being forced to sleep on the concrete floor.

The defendant Randolph, as Director of Public Safety of the State of Illinois, has full and complete authority over all defendants excepting Kerner, and makes the

rules and regulations pertaining to the Illinois State Penitentiary, under which the above acts took place.

The defendant Kerner, as Chief Executive Officer of the State of Illinois, was superior to all other defendants and could have cured all defects in their actions by executive order.

WHEREFORE THE PLAINTIFF DEMANDS,

A) Damages to the sum of Two Hundred and Fifty Thousand ($250,000.00) Dollars as punitive and exemplary damages for the deprivation of plaintiff's rights under color of state law, regulation, custom and usage.

B) Damages to the sum of Two Hundred and Fifty Thousand ($250,000.00) Dollars as punitive and exemplary damages for the deprivation of plaintiff's rights by means of a conspiracy.

C) A Declaration of the Rights, Privileges and Immunities of Plaintiff in the circumstances.

D) Such other and further relief as Justice and Equity may require in the premises.

Respectfully submitted

/s/ Frances Haines
Plaintiff
Reg. No. 16348
Box 711
Menard, Illinois

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV-68-83D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

MOTION TO DISMISS AND SUPPORTING MEMORANDUM—
Filed July 23, 1968

Now come the defendants, OTTO J. KERNER, former Governor of Illinois; ROSS V. RANDOLPH, Director of Public Safety of Illinois; MAX P. FRYE, Warden, Menard Penitentiary; LEWIS LENCE; E. ROGERS; DONALD GENTSCH; WILLIAM SHEETS; and PAUL DUNCAN, prison officials and employees, by their attorney WILLIAM G. CLARK, Attorney General of the State of Illinois, and respectfully move this Honorable Court to dismiss the above-entitled cause, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a cause of action upon which relief can be granted.

In support of the above motion, defendants respectfully submit the following memorandum of law.

Plaintiff, an inmate of the Illinois State Penitentiary, Menard Branch, brings this action under 42 U.S.C. sections 1981, 1983, and 1985(2), all being sections of the Federal Civil Rights Act, invoking the Court's jurisdiction, pursuant to 28 U.S.C. § 1343(3). Among such other relief as justice may require, he seeks punitive and exemplary damages in the sum of FIVE HUNDRED-THOUSAND DOLLARS ($500,000.00) from the named defendants.

In his rather verbose and obtuse complaint, plaintiff alleges that he has been arbitrarily classified into "C. Grade" under the Progressive Merit System, a system from which he contends he receives no benefits and should

not therefore be subject to its provisions. However, plaintiff totally misapprehends what has occurred, and therefore his purported issues are misleading. Pursuant to its rule making authority [1967 Ill. Rev. Stat., Ch. 108, § 10], the Department of Public Safety has prescribed that all prisoners shall be divided into three grades ("A", "B" & "C"). Upon admission an inmate is placed in "A" grade, and "[i]f an inmate's behavior is unsatisfactory, he may be demoted to Grade "C", which will result in a loss of privileges for a period of one year and cannot earn merit time while in Grade "C". [Petition p. 6]. This system pertains to *all* prisoners, whether they are serving a determinate sentence or an indeterminate sentence. If the latter is true, then a prisoner who is demoted to Grade "C" loses his privileges *and* his right to earn merit time. If a prisoner is serving a determinate sentence, he loses only his privileges.[1] The question then is whether the operation of this rule has deprived plaintiff of any constitutional rights. The complaint shows that the plaintiff struck another prisoner on the head with a shovel; that he was twice asked to explain the incident; that he had both times refused to explain his action; that he was punished by demotion to Grade "C", with the corresponding loss of privileges. (Complaint, pp. 7, 8, 9)

The complaint is thusly intimately concerned with internal prison administration. The law is well settled that except under "exceptional circumstances," internal matters such as the conduct of a prison, the enforcement of its rules and regulations, its discipline, and the proper exercise of its discretionary powers, are the sole concern of the States, and the federal courts will not inquire concerning them. *Walker* v. *Pate*, 356 F.2d 502 (7th Cir. 1966), *cert. denied*, 384 U.S. 966 (1966); *Knight* v. *Ragen*, 337 F.2d 425 (7th Cir. 1963), *cert. denied*, 380 U.S. 985 (1965); *Childs* v. *Pegelow*, 321 F.2d 487, 489 (4th Cir. 1963). In view of the clear violation by plaintiff of a legitimate prison rule and regulation, together with the attendant reasonable disciplinary pun-

[1] The respondent is informed that a prisoner so demoted loses his right to go to the movie and also his commissary rights.

ishment, the facts presented do not rise to the exceptional circumstances which are required for a federal Civil Rights suit. Moreover, the acts of prison officials, who being vested with wide discretion in safekeeping and securing prisoners committed to their custody and charged with the right and duty to maintain discipline among inmates, should be upheld if reasonably necessary to effectuate the purposes of imprisonment. *Kelly* v. *Dowd*, 140 F.2d 81 (7th Cir. 1944). Therefore, plaintiff has failed to demonstrate that the defendants, while acting under color of state law or in conspiracy with each other, deprived or abridged his federally protected rights, privileges, or immunities as required by 42 U.S.C. § 1983 and § 1985(2), and hence the complaint should be dismissed.

Parenthetically, it is noteworthy that there is a total absence of any specific allegation that the defendants KERNER, RANDOLPH and FRYE personally participated either individually or in conspiracy with the others, except by the allegation that their respective offices as Governor, Director of the Department of Public Safety, and Warden gave them the authority and responsibility to supervise and correct the alleged wrongful acts of their subordinates. Plaintiff is relying upon the doctrine of respondeat superior, a doctrine which is totally inapplicable as a grounds for recovery under the Civil Rights Act. *Jordon* v. *Kelly*, 233 F. Supp. 731, 739 (W. D. Mo. 1963); *Runnells* v. *Parker*, 263 F. Supp. 271, 274 (C.D. Cal. 1967).

WHEREFORE, defendants respectfully pray this Honorable Court to strike and dismiss the instant complaint and to deny all relief thereunder.

/s/ William G. Clark
Attorney General of the
State of Illinois
160 No. LaSalle Street
Chicago, Illinois 60601

John M. Sorrentino
Assistant Attorney General
Of Counsel

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV-68-83D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

MOTION TO AMEND MOTION TO DISMISS—
Filed November 8, 1968

Now comes WILLIAM G. CLARK, Attorney General of the State of Illinois and Attorney for defendants Jeffie Biggs, Paul Sympson, and Russell Lence, to ask that the motion to dismiss previously filed be amended so that it is also the motion of the defendants Biggs, Sympson and Lence. In support of this motion to amend the motion to dismiss, the Attorney General says as follows:

1) This civil rights action, brought by an inmate of the Illinois State Penitentiary to recover some $500,000 in alleged damages, was filed by leave of court on July 1, 1968. Thereafter at various times, service was had upon various defendants.

2) On July 22, 1968, a motion to dismiss was filed on behalf of all defendants except those on whose behalf this motion is made. It was only through inadvertence that the three defendants above named were not specifically named in the motion to dismiss, and it was not until the plaintiff filed a motion for default judgment against these three defendants that the mistake was discovered. As a matter of fact, the cover letter accompanying the motion to dismiss recited that the motion was on behalf of "Otto J. Kerner, former Governor of Illinois and the other named defendants . . . ."

3) As is more fully set out in the motion to dismiss previously filed, the plaintiff has failed to state a claim and this action is completely without legal justification.

For these reasons, the defendants Biggs, Sympson and Russell Lence ask that an order be entered, amending the motion to dismiss to include their names.

/s/ William G. Clark
Attorney General of the
State of Illinois
160 North LaSalle Street
Suite 900
Chicago, Illinois 60601
(346-2000)
Attorney for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

Cv. No. 68-83-D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

v.

OTTO J. KERNER, ET AL., DEFENDANTS

ORDER DENYING MOTION FOR DEFAULT AND ALLOWING MOTION TO AMEND MOTION TO DISMISS—
Filed November 8, 1968

This matter having come on to be heard on motion of the plaintiff for default, and the court being fully advised in the premises finds that said motion should be denied.

Also coming on for hearing is motion to amend presented by the Attorney General of the State of Illinois to include defendants Biggs, Sympson and Lence in the motion to dismiss, and the court finds that said motion should be allowed.

IT IS HEREBY ORDERED that the motion for default be, and is hereby, denied.

IT IS HEREBY FURTHER ORDERED that the motion to amend motion to dismiss be, and is hereby, allowed.

IT IS HEREBY FURTHER ORDERED that the plaintiff is granted an additional 20 days to file any additional or supplemental brief to the motion to dismiss, and the defendants are to answer said brief within 20 days after the filing of any supplemental brief.

Entered this 8th day of November, 1968.

/s/ Henry S. Wise
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

NOTICE AND PROOF OF SERVICE

To: Hon. William G. Clark, Attorney General
Supreme Court Building
Springfield, Illinois

Please take notice that there is being filed in the above entitled case Motion for Leave to file Admissions and Interrogatories against certain named defendants.

Please take further notice that hereto attached are full and complete copies of all papers now being filed.

Please take further notice that this service is being made upon you as Counsel for the said Defendants with the exceptions of the Defendant Lence.

/s/ Francis Haines
Plaintiff

STATE OF ILLINOIS)
) ss.
RANDOLPH COUNTY)

Francis Haines, being first duly sworn, on oath deposes and says that he has made service of the papers now being filed in this Court upon the Defendants Randolph, Frye, Lence, Sheets and Gentsch, along with such service upon the Attorney General of Illinois, William G. Clark, such done by giving the Prison Officials a copy of the papers for delivery to each defendant along with a copy of such papers for mailing to William G. Clark at his above address, on this 14 day of November, A. D. 1968.

/s/ Francis Haines

Subscribed and sworn to before me, a Notary Public, on this 14 day of November, A. D. 1968, by Francis Haines.

/s/ Donald G. Gentsch
Notary Public
My Commission Expires
June 21, 1969

[SEAL]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

CV No. 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

MOTION FOR LEAVE TO FILE ADMISSIONS AGAINST CERTAIN NAMED DEFENDANTS, PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 15, 1968

Plaintiff, Francis Haines, respectfully moves that he be permitted leave to file, pursuant to Rule 36, Federal Rules of Civil Procedure, Admissions to be directed to the Defendants, Ross V. Randolph, Max P. Frye, Russell Lence, William Sheets, and Donald Gentsch, and that this Court may order the same to answer such admissions.

In support of his above motion plaintiff avers that such have been made necessary to develop the facts of the complaint.

In further support of the above motion plaintiff hereto attaches an affidavit.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

MOTION FOR LEAVE TO FILE INTERROGATORIES AGAINST CERTAIN NAMED DEFENDANTS PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 15, 1968

Plaintiff, Francis Haines, respectfully moves that he be permitted leave to file, pursuant to Rule 33, Federal Rules of Civil Procedure, Interrogatories to be directed to the Defendants Ross V. Randolph, Max P. Frye, Russell Lence, William Sheets, and Donald Gentsch and that this Court may order the same to answer such Interrogatories.

In support of his above motion plaintiff avers that such have been made necessary to develop the facts of the complaint.

In further support of the above motion plaintiff hereto attaches an affidavit.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

AFFIDAVIT IN SUPPORT OF MOTIONS

STATE OF ILLINOIS)
) ss.
RANDOLPH COUNTY)

Francis Haines, being first duly sworn upon his oath, deposes and says: that he is plaintiff in the above entitled cause; that he makes this affidavit in support of his motion for leave to file Admissions and Interrogatories; that he believes that it is necessary to further develop the facts of the case in the light of recent actions; that on or about October 17, 1968, he went to the Inmates Commissary and was permitted to purchase Cosmetics, such as V. O. 5 Hair Oil; After Shave Lotion; Scented Soap; that he tried to buy Hello or Get Well Gretting Cards but was only permitted to buy a Birthday Card; that he was permitted to buy Tooth Paste and Aspirans; that he needs the rules pertaining to the Inmates Commissary so that he may learn the reasoning behind the rules which permit him to buy things TO MAKE HIM SMELL NICE AND DENY HIM PAPER ON WHICH TO PETITION THIS COURT; that he is given paper by the Institutional Commercial School because he is in "C" Grade; this paper is yellow in color; that he makes service copies upon used papers for service on the defendants.

That on October 24, 1968, while he was having papers notarized to be sent to this Court he asked the Defendant Gentsch how was it that some inmates did not receive a year in "C" Grade; that he was told by the Defendant Gentsch that convicts could petition for restoration to Grade by petition to the Progressive Merit System Board;

that such is the first time he ever knew of such provision and that such is not contained in the Inmates Rule Book; that the Progressive Merit System Rules as contained in Paragraph 17, Page 6 of the Complaint, under subtitle "PROMOTIONS" it is said: "in the event of demotion you must spend one year in "C" Grade"; that this Rule and others unknown to Plaintiff are thought to be in the large Rule Book in the Institutional Record Office.

That he is now in bad straights in regards to legal paper as he has to beg from other inmates enough paper to make a copy before he can ask the Commercial School and show such copy to get other paper.

That he is contemplating opening a Football Parlay Ticket in the Institution to get enough cigarettes to trade other inmates for writ papers; that both the trading and parlay tickets are in violation of the institution rules; that the parlay ticket is in violaton of the Laws of Illinois; and if he is caught with parlay tickets it might result in another trip to solitary confinement if not a trial in a criminal court.

That under General Rule No. 15 in the Institution Rule Book an inmate can be punished for giving another inmate a piece of candy, and such rule states: "Trafficking, bartering and trading are strictly forbidden." that under this rule he would be forbidden to take paper which has been offered by other inmates and would be forbidden to "traffic by trading cigarettes for paper; that he believes it is now time for this Court to consider the Ancillary Writ of Injunction asked in regards to the purchase of paper from sources other than the commissary.

That his foregoing statements are true and correct.

/s/ Francis Haines

Subscribed and sworn to before me, a Notary Public, by Francis Haines, on this 14 day of November, A. D. 1968.

/s/ Donald G. Gentsch
Notary Public
My Commission Expires
June 21, 1969

[SEAL]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR ADMISSIONS UNDER RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Ross V. Randolph, within ten days after allowance of these Admissions by the Court, to make the following Admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

That you are duly appointed Director of Public Safety of the State of Illinois?

That as such Director you are commanded by the Laws of Illinois to exercise the powers and discharge the duties of such Department?

That you are given Rule making authority for the Illinois State Penitentiary System by the provisions of Paragraph 10, Chapter 108, Illinois Revised Statutes, 1967?

That you have exercised such power: to quote the Attorney General of Illinois, in his motion to dismiss in the above entitled cause as follows:

> "Pursuant to its rule making authority (1967 Ill. Rev. Stat. Ch. 108, S. 10) the Department of Public Safety has prescribed that all prisoners shall be divided into three grades ("A", "B" & "C".)"

That the provisions of 1967 Illinois Revised Statutes, Ch. 108, pars. 76-81, requires that the Department of Public Safety shall classify all prisoners into three grades, viz: First, Second and Third Grades?

That there are no provisions contained in the above Paragraphs 76-81, concerning disciplinary measures in such classifications?

That the classification scheme contained in the above paragraph 76-81 are to be based upon ability and willingness to work in general?

That is required by Illinois Revised Statutes, 1967, Ch. 108, Paragraph 41, that the Rules and Regulations to be read to the Convicts at least once each month?

That the provisions of Illinois Revised Statutes, 1967, Ch. 108, Paragraph 45, require that the Department of Public Safety to make Good Time Rules for the diminution of sentences?

That the Progressive Merit System Rules, as contained in Paragraph 17, Page 6, of the Complaint, is a correct copy of the Rules as contained in the Current Rule Book at Menard Prison?

That there is a Rule within the Progressive Merit System which permits convicts to petition for restoration to Grade every three (3) months?

That there is a Rule within the Progressive Merit System which states all convicts can be placed in "C" Grade?

That there are no provisions within the Progressive Merit System Rules made available to convicts which state that a convict in "C" Grade can only buy Cosmetics at the Commissary and cannot buy paper on which to type a petition to the Courts?

That the provisions of the Illinois Constitution, as set forth in Paragraph 8, Page 4, of the Complaint are a correct recital of such provisions?

That the Act of 1867, Sessions Laws, Page 31, Illinois Statutes 1868, Section 37, Chapter 81, is correctly recited in Paragraph 13 (b), Page 5 of the Complaint?

That the act of July 1, 1871, Illinois Revised Statutes, 1925, is correctly quoted in Paragraph 13 (c) Page 5 of the Complaint.

That the Plaintiff appeared before the Parole Board in 1959, received a continuance to 1964; appeared before the Parole Board in 1964, received a continuance

to 1967; appeared in 1967, received a continuance to 1968; appeared 1968, received a continuance to 1970?

That under none of these above continuances did Plaintiff receive the benefits of any good time regulations?

That during the year 1968 Inmate John Baze, 33182, was taken before the Circuit Court of Randolph County, Illinois, and tried for escaping from the Prison Honor Farm?

That the following Rules contained as Commissary Rules in the present Institutional Rule Book, Page 26, read as follows:

> "2) Have your store order filled out properly (typed)."
>
> "5) You will file past the Commissary Officer with your order in your hand, and after he has placed your balance on same, put your prints on the order in two places and proceed to secure your order as instructed by your officer."

That the Opinion of Mr. Justice Rutledge, concurring in Screws v. United States, 325 U.S. 91, at 129, states as follows:

> "Generally state officials know something of the individuals basic legal rights. If they do not, they should, for they assume that duty when they assume their office. Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore know and observe it."

That the interdictions of Title 42 United States Code, Section 1985, prohibit the deprivation of the right to the due course of Justice in any state or territory?

That there is in the Menard State Penitentiary a place of confinement known by various names, officially as Observation and Isolation, and colloquially as "The Hole", "Solitary Confinement" and "Sympsons Hotel" and that punishment in such is aptly described in the Complaint, Paragraph 19, Page 8?

That you, as Director of Public Safety, are considered the Supreme Administrator of the Illinois Penitentiary System?

That you received the Service Copy of this Request for Admissions typed upon used paper?

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR INTERROGATORIES PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Ross V. Randolph, within ten days after allowance of these Interrogatories by the Court, to answer the following Interrogatories for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

That in your enforcing the Progressive Merit System Rules at the penitentiary, why are those prisoners serving Definite Sentences being denied any merit time when they receive a "non-dated" continuance?

Under what particular provision of Paragraph 10, Chapter 108, Ill. Rev. Stat. 1967, are you given power and authority to classify prisoners into Grades "A", "B", and "C" when Ill. Rev. Stat. 1967, Chapter 108, Paragraph 76, states that prisoners shall be classified into First, Second and Third Grades?

Under what particular provisions of Ill. Rev. Stat. 1967, are you given the power and authority to use any Grade System for discipline when the provisions of Ill. Rev. Stat. 1967, Ch. 108, Pars. 76-81, contains no such provisions?

Under what particular reasoning do you exclude plaintiff from receiving merit time solely because he is given an undated continuance, when those men receiving a dated continuance would be given 1 year, 3 months on

a five year continuance; 9 months on a three year continuance; three months on a year continuance; and, 6 months on a two year continuance; a total of 2 years and 9 monts, the Table on Page 16 of the Current Rule Book states an eleven year continuance would be given two years and nine months merit time thereby making the prisoner eligible for review of his case in eight years and three months?

In excluding definite sentences of life from benefits of Good time what consideration have you given the requirements of Ill. Rev. Stat. 1967, Ch. 108, Par. 45, which provide that Good Time Rules should be made?

Have you, during your tenure as Warden of the Illinois State Penitentiary, Menard, Illinois, ever read the Rules and Regulations to the convicts as required by Ill. Rev. Stat. 1967, Ch. 108, Par. 41?

Have you, during your tenure as Director of Public Safety, of Illinois, required that the present Warden of the Illinois State Penitentiary read the Rules and Regulations to the convicts?

In Paragraph 17, Page 6, of the Complaint the Progressive Merit System Rules are copied, under the sub-heading "Promotions" and in the second paragraph thereof, it is stated: "In the event of demotion you *must* spend one year in "C" Grade * * *" is this emphasized word "must" to be taken in the sense of Merriman's Webster Dictionary as meaning mandatory, obligatory and required?

In view of the fact that there is nothing contained in the current Rule Book in regards to the right of an inmate to petition to restoration to Grade, how is it permitted?

Why is such provision for petition for restoration to Grade not contaiend in the Rule Book made available to convicts?

In the enforcing of Grade "C" with its consequential loss of Commissary Privileges, why are these convicts seeking to petition the Court for redress denied the right to purchase paper to write to the Courts?

In the enforcing the loss of Commissary Privileges to inmates in Grade "C" what consideration was

given to those men's right of access to the courts, when they cannot buy paper?

Do you think it is more important for a man in Grade "C" to buy Cosmetics so he can smell nice than it is to petition the Courts for redress of grievances?

Have you delegated any authority to the Defendant Sheets to alter, abrogate or annul the existing rules, whereby an inmate is not permitted to fill out his order as required by Commissary Rule No. 2 and the balance is placed upon such order by a convict other than the Commissary Officer, as required by Commissary Rule No. 5?

Under what authority, delegated or assumed, do you have the power to require an inmate in the Illinois State Penitentiary, Menard, Illinois, to buy paper at One (1¢) Cents per sheet and then furnish a copy of any legal papers being sent to the Courts for the Institutional Files?

For what reasons are these papers required for the Institutional Files used?

Taking into consideration the ruling of the United States Supreme Court in Ex parte Hull, 312 U.S. 546, that the prison officials in Michigan could not demand approval of the Parole Board Attorney before papers were sent to the Courts, upon what base do you require a copy of papers being sent to the Courts as a condition precedent for mailing of such papers to the Courts?

Are you of the opinion that the State of Illinois can vest you with the power to ignore the Constitution and Laws of the United States?

Taking into consideration that the Illinois Constitution as set forth in the Complaint, Paragraph 8, Page 4, which requires and gives, the right to trial by jury, an indictment of a grand jury for a criminal offense, the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation, to have a copy thereof, process to compel the attendance of witnesses, a speedy public trial, and not to be compelled to give evidence against himself, were such above given any consideration when plaintiff was placed in solitary confinement and "C" Grade for actions which might constitute a crime under the Laws of the State of Illinois?

Under what particular Illinois Statute do you profess to have power to make rules which might deny any person of the right to the due course of justice in the State of Illinois for offenses committed in the Illinois State Penitentiary?

Under what particular Illinois Statute do you proprofess to have power to impose Solitary Confinement as punishment for breach of prison rules in view of the Act of July 1, 1871, Ill. Rev. Stat. 1925, Ch. 108, Par. 37, prohibited cruel and unusual punishments in the Illinois Prisons?

Are you of the opinion that revocation of the above law would resinstate the provisions of the 1827 and 1867 laws which permitted the imposition of Solitary Confinement?

Have you been relying upon custom, usage or prior practice in your formulation of prison rules?

Have you given any consideration to the Rule of Law as stated in United States v. Jones, 207 F. 2nd. 785 (CCA 5) that a violation of the Laws of a State might constitute a violation of the Federal Civil Rights Acts.

Are you of the opinion that your position as a state officer would vest in you the power to overthrow or ignore the Constitution and Laws of the United States?

Have you delegated any disciplinary powers to the Defendant William Sheets, as Commissary Officer in the Menard Prison, to remake or ignore the Rules in the inmates Rule Book?

Have you authorized the Defendant Sheets to refuse to sell writ paper to inmates in "C" Grade, and to limit such inmates to purchase of Cosmetics?

Why has Defendant Sheets been permitted to formulate or enforce a rule which prohibits an inmate from filling out his Commissary Order as required by Rule 2 of the Commissary Rules?

Has any consideration been given to a surmise that such action might permit inmate commissary clerks to add items to the commissary orders after the inmate has traded, and therefore take what is known in the institution as the "Inmates Tax" to cover shortages?

Are you aware or were you informed that Prison Rumor has the Commissary Five Hundred ($500.00) Dollars short at the September audit?

Have you given Defendant Sheets any authority to ignore the Commissary Rule No. 5 and permit inmates to do his work, including the enforcement of prison rules, as set forth in the Complaint, Paragraph 20, Pages 8 and 9?

Have you given any consideration to the Rule which limit paper to be purchased in the commissary for writing writs to 8½ x 14 Inch Pink Paper, to be typed with Green Ink, to the Rules of Various Courts, and in particular that of the United States Supreme Court, Rule 47 (Circa 1954) which requires that typed papers be 8½ x 13 Inch Opaque, unglazed paper and the rules of the Illinois Supreme Court which require typed papers to be on 8½ x 11 inch white paper?

To what causes do you attribute the discrepancies in the cost of Menard Paper in the Commissary, Fletcher Manifold, 8½ x 14 Inch Paper, at Five ($5.00) Dollars per ream, with the price of paper in the Statesville Commissary, Hammermill Bond, 8½ x 13 White Opaque, Legal Cap, at about Two ($2.00) Dollars per ream?

To what cause do you attribute the discrepancies in the price of Typewriter Ribbons in Menard, from Two ($2.00) Dollars to Two ($2.25) Dollars, Twenty-five Cents, with the cost of Ribbons in Statesville Commissary being about One ($1.00) Dollar?

If the Rules of the Department of Public Safety are to be given an uniform application why are Statesville Convicts permitted to make applications to the Courts on White Paper with Black Ribbons and Menard Convicts required to use Pink Paper with Green Ribbons, making a much less legible copy?

Do you believe that you, as a Public Officer of the State of Illinois, can plead ignorance of the law in view of the statements of Mr. Justice Rutledge in Screws v. United States, 325 U.S. 91, 129?

Respectfully yours

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR ADMISSIONS PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff Francis Haines, requests that Defendant Max P. Frye, within ten days after allowance of these admissions by the Court, to make the following admissions for the purposes of this action only and subject to all pertinent objections as to admissibility which may be interposed at the trial.

That you are Warden of the Illinois State Penitentiary, Menard, Illinois.

That you are a Member of the Progressive Merit System Board?

That you were Warden on March 12, 1968?

That on March 12, 1968, the Progressive Merit System Board demoted the plaintiff, Francis Haines, No. 16348, to "C" Grade, for hitting another inmate on the head with a shovel and refusing to explain his actions?

That as Warden you are enforcing a Rule which sets a condition precedent on transmission of papers to the Courts that the Institution must be given a copy of such papers?

That this Service Copy of the Request for Admissions and the Service Copy of the Interrogatories were given to you upon used papers.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR INTERROGATORIES PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURES—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Max P. Frye, within ten days after allowance of these interrogatories by the Court, to answer the following Interrogatories for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

In demoting plaintiff to "C" Grade did you consider that his actions in hitting another inmate on the head with a shovel might have been a "criminal offense" under the Laws of Illinois?

In demoting plaintiff to "C" Grade did you consider that his refusal to talk and explain his actions might be within his right to remain silent?

In demoting Plaintiff to "C" Grade for his actions did you give any consideration to the requirements of the Illinois Constitution (1870) Article II, Sections 2; 3; 8; 9; and 10, in regards to the guarantees therein contained for trial of criminal offenses?

In demoting plaintiff to "C" Grade for his actions did you give any consideration to the right to the due course of justice in the State of Illinois as guaranteed by Title 42, United States Code, Section 1985?

Why is not the rules which states all convicts may be demoted to "C" Grade contained in the Inmates Rule Books?

Why is not the rule which provides that inmates in "C" Grade may petition for restoration to "A" Grade contained in the Inmates Rule Book?

Have you ever, during your tenure as Warden, read the Rules and Regulations to the convicts?

Why do the rules now enforced in the Illinois State Penitentiary, Menard, Illinois, require that a copy of all papers being sent to the courts be provided for the Institutional files?

Where do you derive the power to impose solitary confinement in the Menard Penitentiary?

Where do you derive the power and discretion as to whether inmates who commit crimes in the Menard Penitentiary are to be tried in the Courts or summary punishment in the penitentiary?

Does the Progressive Merit System Board sit en bloc or as individuals?

Is a quorum required for action by the Progressive Merit System Board?

Whose decision was it to try those prisoners who committed the killings in the Dining Room and those other inmates who have escaped during your tenure of office in the Circuit Court of Randolph County, Illinois?

Upon what specific reasoning do you proceed in the summary trial of criminal offenses and summary punishments?

Have you been given or requested any legal opinions of your powers in regards to the imposition of summary punishments?

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR ADMISSIONS PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Russell Lence, within ten days after allowance of these Admissions by the Court to make the following Admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

That you are Senior Guard Captain at the Illinois State Penitentiary, Menard, Illinois?

That on March 10, 1968, you were sitting as Disciplinary Officer at the penitentiary?

That on March 10, 1968, Plaintiff Francis Haines, appeared before you upon a Disciplinary Report?

That such Disciplinary Report was for hitting another inmate upon the head with a shovel?

That the Illinois Revised Statutes, 1967, Ch. 38, Division II, Article 12, Sections 2 to 6, defines the Crime of Assault and Battery, and sets the legal penalties therefore?

That the Illinois Constitution, 1870, Article II, Sections 2; 3; 8; 9 and 10 (as contained in the Complaint served upon you in Paragraph 8, Page 4), sets forth protections to be accorded to persons who are charged with criminal offenses?

That the above Constitutional provisions are supplemented by the Illinois Revised Statutes, 1967, Criminal

Law and Procedure, Ch. 38, Division III, Titles I to VII, pages 1590 to 1613, governing trial in criminal offenses?

That the Illinois Revised Statutes, 1967, Division I, Article 25-1, Section 25-1, (3) defines Mob Action and states that any assembly of two or more persons trying any person without authority of law, is a misdemeanor?

That the Defendant Rogers was present on March 10, 1968, and participated in the discussions as to the punishment to be imposed?

That the punishment imposed was fifteen (15) days?

That this punishment is known in the institutional vernacular as "The Hole", "Solitary Confinement" "Sympsons Hotel" and the "Stone House"?

That the punishment is aptly described in the Complaint, Paragraph 19, Page 8?

That a former Director of Public Safety, Mr. Michael Seyfrit is quoted in Illinois Criminal Law and Procedure (Stanton 1955) on Paroles, Pardons, Rules and Regulations, Chap. 26, Par. 1686, pp. 659-660, as saying (emphasis supplied):

> "* * * minor violations, unless a number, usually three or more, occurring within a period of a year or less, generally do not call for demotion, *solitary confinement for varying lengths of time usually being considered sufficient.*"

What changes, to your knowledge, other than the installation of plumbing, has been made in this area of punishment since 1955?

In addition to this imposition of solitary confinement plaintiff was also demoted to "C" Grade.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR INTERROGATORIES PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Russell Lence, within ten days after allowance of these interrogatories by the Court, to answer the following interrogatories for the purpose of this Action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

From where do you derive your power as Disciplinary Officer, while sitting as such, statutes, Institutional Rules or Custom and Usage?

On March 10, 1968, did you give any consideration as to whether or not the facts contained in the Disciplinary Report on the Plaintiff, Francis Haines, might constitute a criminal offense under the Laws of the State of Illinois?

Have you any knoweldge of the varying degrees of the actions which constitute assault and battery?

On March 10, 1968, did you have any knowledge of the guarantees contained in the Illinois Constitution, Article II, Sections 2; 3; 8; 9 and 10; regarding trial of criminal offenses in the State of Illinois?

On March 10, 1968, did you have any knowledge of the interdiction of the Federal Civil Rights Acts, Title 42 United States Code, Sections 1981, 1983 and 1985?

On March 10, 1968, did you have any knowledge of the provisions of the Illinois Revised Statutes, 1967,

Criminal Law and Procedure, Ch. 38, Division III, Titles I to VII, pages 1590 to 1613, which govern trial in criminal offenses in Illinois?

On March 10, 1968, did you have any knowledge of the organic law relating to the three preceeding questions?

If, on March 10, 1968, you had any knowledge of the Rule of Law that Ignorance of the Law is no excuse for men in general and much less an excuse for state officers, would you have proceeded as you did. Such Rule being set forth in the opinion in Screws v. United States, 325 U.S. 91, at 129 (concurring opinion by Mr. Justice Rutledge) as follows?

> "Generally state officials know something of the individuals basic legal rights. If they do not, they should, for they assume that duty when they assume their office. Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore know and observe it."

On March 10, 1968, were you aware of the provisions of Title 42, United States Code, Section 1985, which prohibits the taking of the due course of justice in any state or territory?

If you had such knowledge would you have given consideration to such law?

Have you made any effort to obtain knowledge of prisoners basic legal rights, under the State and Federal Constitutions and Laws?

Did the plaintiffs refusal to explain his actions to you have any bearing upon the amount of punishment imposed?

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR ADMISSIONS PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant William Sheets, within ten days after allowance of these admissions by the Court to make the following admissions for the purpose of this action only subject to all pertinent objections of admissibility which may be interposed at the trial.

That you are Commissary Officer at the Illinois State Penitentiary, Menard, Illinois.

That on March 27, 1968, Inmate Bond, Register Number 32163, was assigned to work under your supervision at the Inmates Commissary.

That the duties of Inmate Bond included the placing of Inmates balance upon their Commissary Slips.

That Commissary Slips by Inmates are required to be turned in with only the heading thereof typed and the item list vacant.

That Commissary Rule No. 2 in the Current Inmate Rule Book reads as follows:

"Have your order filled out properly (typed)"

That Commissary Rule No. 5 in the Current Inmate Rule Book reads as follows:

"You will file past the Commissary Officer with your order in your hand, and after he has placed your

balance on same, put your prints on the order in two places, and proceed to secure your order as instructed by your officer."

That Fletcher Manifold Paper, sixe 8½ x 14 inch, Pink in Color, is sold at the price of one (1¢) cent per sheet.

That the price of M & M Carbon Paper is ten (10¢) cents per sheet in the Commissary.

That the price of typewriter Ribbons, Green in Color, when first placed in the Commissary in the Fall of 1964 were One ($1.50) Dollar, Fifty Cents.

That in the year of 1967 the Plaintiff purchased at least three typewriter ribbons, paying varying prices for the same, from Two and a Half ($2.50) Dollars to Two ($2.00) Dollars.

That inmates in "C" Grade are permitted to purchase only Cosmetics under the Rules enforced by you.

That when an inmate has the rush placed upon him in the Commissary before he can check his order he has no recourse to recover any shortages.

That you have no Price List posted in any conspicious place where it can be read in the Commissary and no price list is currently available in the institution.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR INTERROGATORIES PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant William Sheets, within ten days after allowance of these interrogatories by the Court, to answer the following interrogatories for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

Have you been vested with any power, discretion of authority to alter, amend or ignore the Commissary Rules as contained in the current Inmate Rule Book in the Illinois State Penitentiary, Menard, Illinois?

In the event you have not been vested with any power, discretion or authority to alter, amend or ignore the Commissary Rules in the Rule Book why are not inmates permitted to have their store orders typed as required in Commissary Rule No. 2; and only the Inmate Clerks permitted to list the items purchased?

Why are not these Inmate Clerks required to Red Line Commissary Orders?

Do you receive any complaints from the inmates in the Illinois State Penitentiary, Menard, Illinois, that additional items are placed on their Commissary Lists after they have left the commissary?

Is any Audit or Check of any kind made upon Commissary Orders after an Inmate has traded?

How long is it since you personally put an inmates Balance on his Commissary Order as required by Commissary Rule No. 5?

What is the price you pay for Fletcher Manifold per ream?

What considerations prompted the selling nothing but Pink Paper to write papers to the Courts?

If the consideration that too much state paper was being stolen for use by inmates did you or the person ordering Pink Paper give any consideration to the fact that paper with Watermarks could have been purchased for sale in the Commissary?

May it be correctly stated that until about 1964 that this Pink Paper was sold by the Ream at a price of Four ($4.00) Dollars per ream in the commissary?

That while this Pink Paper was being sold for the above sum it was priced in less than Ream Lots at one (1¢) cents per sheet, because of the time and bother to count it out?

What is your cost of the Green Typewriter Ribbons sold at the Commissary?

Why are inmates compelled to take what an inmate clerk brings not rather than a ribbon which fits his machine?

Are you aware of the use of the term "Inmate Tax" as used in the institution in relation to the Commissary?

Are you aware of the Prison Rumor that the Inmates Commissary Books was Five ($500.00) Dollars short at the September Inventory?

Was it because of this shortage in the inventory that the prices of Hair Oil and Coffee were raised?

Is the Federal Excise Tax still in existence on the sale of V. O. 5 Hair Oil?

If such Federal Excise Tax is still in existence are you paying tax on the selling price over the advertised price of $1.10?

Are you aware that the Federal Criminal Code, Title 18, United States Code, Section 3, requires as follows:

> "Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact."

Are you aware that the Federal Criminal Code, Title 18, United States Code, Section 4, provides:

> "Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than three years."

Are you aware of the rulings of the United States Supreme Court in Re Quarles, 158 U.S. 352; and Motes v. United States, 178 U.S. 458; that every person has the right to inform the United States of the violations of its laws?

What objections could you have to the plaintiff informing the United States authorities of the violation of their laws if you are not paying the additional excise tax upon the added price of V. O. 5 Hair Oil?

Within the months of August, September and October, 1968, has any inmate assigned to the Inmates Commissary been transferred for giving Commissary Articles to a pervert?

Have you ever considered that the refusal of the Commissary to sell the Plaintiff paper on March 27, 1968, might be a violation of his right to access to the Courts?

Did Inmate Bond properly heed your Orders and Instructions on March 27, 1968, when he told the Plaintiff that he could take the matter to court, if he, plaintiff, did not like it?

Under what line of reasoning do you operate when you fail and/or refuse to sell paper which compares to the requirements and rules of the various courts?

Are you aware that the Rules of the United States Supreme Court Rule 47 (Circa 1954) requires opaque, unglazed paper, 8½ x 13 inches in size (Legal Cap.)?

Is there any full, complete and entire copy of all Commissary Rules in existence?

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR ADMISSIONS PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Donald Gentsch, within ten days after allowance of these admissions by the Court to make the following admissions for the purposes of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

That you are Record Clerk at the Illinois State Penitentiary, Menard, Illinois?

That you are a Member of the Progressive Merit System Board at the Illinois State Penitentiary, Menard, Illinois?

That as such Record Clerk you prepare what is known as the Parole Board Dockets for each month?

That there is an Institutional Rule Book in Your Office, approximately in size as follows: Contained in a Ledger Binder, 8½ x 14 inches, about 5 inches thick of typed papers?

That on or about April 2, 1968, you opened this Ledger Book to show plaintiff a rule which stated that all convicts could be placed in "C" Grade, in answer to plaintiff's letter to Defendant Lewis C. Lence complaining about being placed in "C" Grade?

That plaintiff told you that when he was given Good Time for the twenty-nine (29) years he had served he would accept "C" Grade with good graces?

That plaintiff told you he should be classified into either First, Second or Third Grade according to the Illinois Laws?

That in answer to the above statement you produced a Volume of the Illinois Revised Statutes, 1967, which contained Chapter 108 of such laws, and turned to Paragraphs 76-81 and plaintiff pointed out to you wherein it spoke of First Grade and you then closed the book.

That on or about October 24, 1968, when plaintiff was having legal papers notarized he asked of you how some cinvicts spent only three months in "C" Grade and you informed him that convicts had the right to petition for restoration of grade every three months?

That neither of these above provisions: all convicts can be placed in "C" Grade and all convicts can petition for restoration to the prior grade are contained in the Inmates Rule Book.

That you are the Notary Public who notarized papers being sent to the Courts.

That it is a condition precedent for mailing legal papers to the Courts that the Institutional Files must be furnished with a copy of all such papers.

That in the current Inmates Rule Book, page 16, there is contained therein a merit time table which states, in part, as follows.

"MERIT TIME EARNED ON A SET.

"Continuance in years from date of arrest of date of sentence	"Merit Time earned in years, months.			"Case reviewed in years, months.		
	yrs.	Mo	days	yrs	mo	days
20	5	0	0	15	0	0
11	2	9	0	8	3	0

That plaintiff was received in the Illinois State Penitentiary, Joliet, Illinois, on July 12, 1939.

That plaintiff appeared before the Parole Board at Menard, Penitentiary and received a continuance until July 1970.

That taking from his entrance in 1939 until 1970 plaintiff has received thirty-one (31) years of continuances.

That taking the above table extracts as a guide plaintiff can be said to be entitled to seven (7) years and nine (9) months Merit Time, less time lost, and therefore can be said to only have to serve twenty-three (23) YEARS AND THREE (3) months to have his case reviewed by the Parole Board.

That since plaintiff has now served twenty-nine (29) years and four (4) months, which is six (6) years and one (1) month over the required twenty-three (23) years and three (3) months set forth in the table in the Inmates Rule Book.

That you exclude prisoners receiving an undated continuance from the benefits of the Merit Time Tables.

That prisoners serving definite sentences receive undated continuances.

That you received the Service Copy of these admissions and interrogatories typed upon used papers.

Respectfully submitted

/s/ Francis Haines
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

No. CV 68-83 D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

vs.

OTTO J. KERNER, ET AL., DEFENDANTS

REQUEST FOR INTERROGATORIES PURSUANT TO RULE 33, FEDERAL RULES OF CIVIL PROCEDURE—Filed November 21, 1968

Plaintiff, Francis Haines, requests that Defendant Donald Gentsch, within ten days after allowance of these interrogatories by the Court, to answer the following interrogatories for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

As Record Clerk at Menard Prison, do you maintain or possess any copy of the Daily Journal required to be kept by the Department of Public Safety by Illinois Revised Statutes, 1967, Ch. 108, Par. 17?

In what manner does the Progressive Merit System Board act in demoting convicts, en bloc or as individuals?

During your tenure as a member of the Progressive Merit System Board has any convict ever been given the opportunity to be heard in defense of the charges?

Does the Ledger Book which was used to show plaintiff that all prisoners could be placed in "C" Grade contain all the institutional rules?

That the placing of an inmate in "C" Grade is a disciplinary action?

Do you know of, as Record Clerk, of any classification of the convicts pursuant to the requirements of Illinois Revised Statutes, 1967, Ch. 108, Pars. 76-81?

Do you know of any interpretation of Illinois Revised Statutes, 1967, Ch. 108, Pars. 76-81, which construes it so as to permit disciplinary action to be taken there-

under, either by the Courts, the Attorney General or the prison administration?

Who wrote up the plaintiff for consideration by the Progressive Merit System Board for demotion?

Is there a copy of such report for demotion contained in the Daily Journal of the Institution Files?

Where is the rule pertaining to the right of an inmate to petition for restoration to Grade contained?

How many other Progressive Merit System Rules, other than the two herein spoken of, are in existence and not contained in the Inmates Rule Book?

If such above rules exist, where are they contained?

Where is the rule which requires a copy of all papers being sent to the Courts be furnished for the Institutional Files contained?

What becomes of such copies furnished to the Institutional files, is information concerning them given either to Law Enforcing Officials, Courts or the Parole Board?

Are convicts serving Definte Sentences for the crime of Burglary, other than those convicted as Habitual Criminals, given Good Time as provided by law, for diminution of their maximum term?

Is there any Order in the Institution Files, similar to the below quoted Bulletin?

"November 18, 1955

Bulletin No. 246.

"Quoted below is a copy of the Order received from the Parole and Pardon Board dated November 9th.

"Commencing with the December 1955, parole docket and all future dockets, inmates whose names appear thereon who are out of grade, or in solitary confinement, shall not appear before members of the Board for hearing.

"Their cases shall be continued until such time as they have made grade or have been released from solitary confinement.

(Signed) J. E. RAGEN
Warden"

The above being listed as Bulletin No. 246, dated November 9th, 1955, at Statesville Branch?

Are you aware of the Opinion of the Attorney General of Illinois, No. 298, p. 77, 1944 (dated April 19, 1944, therein is said in the final Paragraph thereof, that:

> "Paragraph 807, Chapter 38, Illinois Revised Statutes, 1943, supra, explicitly provides for the discharge of a prisoner at the expiration of the maximum term provided by law for the offense for which a prisoner is committed; making allowance for good time as provided by law."

In view of the statement of the Attorney General that allowance must be made for Good Time upon the Maximum Sentence how is such Good Time computed in relation to the Plaintiff's Sentence?

Has the Progressive Merit System Board made any Rules and Regulations concerning what items an inmate in "C" Grade may purchase in the Commissary?

If so, has the Defendant Sheets been given any authority to alter, amend or modify the same?

If the Progressive Merit System Board has made any rules or regulations concerning Commissary purchases by inmates in "C" Grade where and how can such be learned?

Respectfully submitted
/s/ Francis Haines
Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ILLINOIS

Cv. 68-83-D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

v.

OTTO J. KERNER, Former Governor, State of Illinois, Chicago, Illinois; ROSS V. RANDOLPH, Director of Public Safety, State of Illinois, Springfield, Illinois; MAX P. FRYE, Warden; LEWIS C. LENCE, Assistant Warden; PAUL V. SYMPSON, Senior Guard Captain; RUSSELL LENCE, Guard Captain; E. ROGERS, Guard Lieutenant; DONALD GENTSCH, Record Clerk; WILLIAM SHEETS, Commissary Officer; PAUL T. DUNCAN, Guard, all of the Illinois State Penitentiary, Menard, Illinois 62259, DEFENDANTS

ORDER DISMISSING COMPLAINT—
Entered December 19, 1968

Motion of the defendants to dismiss the complaint filed by the plaintiff having come on for hearing, briefs having been filed, and the court being fully advised in the premises finds that this is a civil rights action for damages in the amount of $250,000.00 for depriviation of plaintiff's rights by means of conspiracy by the defendants.

The complaint alleges that the plaintiff an inmate of the Illinois State Penitentiary at Menard, Illinois, hit another inmate with a shovel. The plaintiff alleges that he would not reveal to the officers the reason for his action and disciplinary measures were taken by the prison authorities and the plaintiff was demoted to Grade "C" and a demotion to this grade causes the inmate to lose certain privileges. The plaintiff alleges that he does not come under the grade system inasmuch as he received a life sentence. Illinois Revised Statutes, Ch. 108, § 10

provides for the "Powers and duties of Department of Public Safety" and reads in part as follows:

> "The Department shall make and enforce all such general rules, regulations and orders for the government and discipline of the penitentiary as it may deem expedient . . . ."

In accordance with this authority the Parole and Pardon Board enacted certain rules and regulations. Rule 1 provides in part as follows:

> "(C) Every person sentenced to the penitentiary regardless of when sentenced, and regardless of the length of sentence shall be eligible for parole at the end of 20 years unless his or her minimum sentence, less "Good Time" is less than 20 years.
>
> "In each case 'Good Time' shall be deducted as prescribed by the rule of the Department of Public Safety providing for the diminution of sentences as required by statute, hereinafter referred to as 'Good Time', as distinguished from 'Merit Time'."

Illinois Revised Statutes, Ch. 108, § 45 provides as follows:

> "The Department of Public Safety is authorized and directed to prescribe reasonable rules and regulations for the diminution of sentences on account of good conduct, of persons heretofore and hereafter convicted of crime, who are confined in the State penal and reformatory institutions."

Except under exceptional circumstances, internal matters in state penitentiaries are sole concern of states and federal courts will not inquire concerning them. U.S. ex rel. Lee v. People of State of Illinois, C.A. Ill., 1965, 343 F. 2d 120; U.S. ex rel. Knight v. Ragen, C.A. Ill., 1964, 337 F. 2d 425, certiorari denied 380 U.S. 985. This plaintiff has failed to show that the defendants, while acting under color of state law or in conspiracy with each other, deprived or abridged his federally protected rights, privileges, or immunities as required by 42 U.S.C. § 1983 and § 1985(2). The defendants were merely car-

rying out the rules and regulations of the institution as provided by law.

IT IS THEREFORE ORDERED that the motion to dismiss be, and is hereby, allowed, and the cause of action is dismissed.

Entered this 19th day of December, 1968.

/s/ Henry S. Wise
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ILLINOIS,

Cv. 68-83-D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

v.

OTTO J. KERNER, ET AL., DEFENDANTS

ORDER DENYING MOTION FOR REHEARING—
Entered January 8, 1969

Motion of plaintiff to reconsider and set aside order dismissing complaint entered December 20, 1968, having come on for hearing, and the court being fully advised in the premises finds its order of December 20, 1968 covers the issues involved and no change will be made as to said order.

IT IS THEREFORE ORDERED that the motion for reconsideration and setting aside of order dismissing complaint entered by this court on December 20, 1968 be, and is hereby, denied.

Entered this 8th day of January, 1969.

/s/ Henry S. Wise
United States District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

CV 68-83-D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

v.

OTTO J. KERNER, ET AL., DEFENDANTS

MOTION FOR LEAVE TO FILE AND PROSECUTE APPEAL IN FORMA PAUPERIS, PURSANT TO TITLE 28 UNITED STATES CODE, SECTION 1915 (a) AND RULE 75 (m) FEDERAL RULES OF CIVIL PROCEDURE—Filed January 31, 1969

Francis Haines, plaintiff in the above entitled cause, moves the Court that he be permitted leave to prosecute his appeal in Forma Pauperis as provided in Title 28, United States Code, Section 1915 (a) and Rule 75 (m), Federal Rules of Civil Procedure, construed in Adkins v. Dupont, 335 U. S. 331.

In support of his above action plaintiff avers that he presents his motion pursuant to the teachings of Adkins v. Dupont, 335 U. S. 331, at 337, construing Rule 75 (m), Federal Rules of Civil Procedure.

In further support of his motion plaintiff avers that he will present typewritten Transcripts of the Record to the United States Court of Appeals.

In further support of his motion plaintiff avers that he will pay the filing fee in the Court of Appeals, which he understands to be Twenty-five ($25.00) Dollars.

In further support of his motion the plaintiff avers that he included in his Motion of Appeal the specific questions upon which he desires to appeal.

In further support of his above motion plaintiff avers that he is sending to borrow the money to pay the filing fee in the Court of Appeals.

Plaintiff hereto attaches his Affidavit of Forma Pauperis, made Pursuant to Adkins v. Dupont, 335 U. S. 331.

Respectfully submitted

/s/ Francis Haines
Plaintiff-Appellant, Pro Se
Reg. No. 16348
Box 711
Menard, Ill. 62259

A

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ILLINOIS

CV 68-83-D

[File Endorsement Omitted]

FRANCIS HAINES, PLAINTIFF

v.

OTTO J. KERNER, ET AL., DEFENDANTS

NOTICE OF APPEAL—Filed February 13, 1969

To: Attorney General of Illinois
160 No. LaSalle St.
Chicago, Ill. 60601

You will please take notice that the Plaintiff herein, Francis Haines, has filed in the Office of the Clerk of the United States District Court, Eastern District of Illinois, his notice of appeal by him, from the Judgments entered in the case, wherein the judgment of the said Court was that the actions complained of were taken under and warranted by law, and ordered that the said

Complaint be dismissed upon the Motion to Dismiss by the Attorney General of Illinois.

That, therefore, Plaintiff herein notifies the Defendants that he has filed his Notice of Appeal to the Circuit Court of Appeals for the Seventh Circuit.

From the entire judgment of the District Court aforesaid and his grounds for said appeal, the errors relied upon are:

1. That the United States District Court, Eastern District of Illinois, erred in deciding grave constitutional matters upon a Motion to Dismiss and without hearing the facts and the law.

2. That the United States District Court, Eastern District of Illinois, erred in holding that the Complaint failed to state a valid cause of action under the Federal Civil Rights Acts.

3. That the United States District Court, Eastern District of Illinois, erred in failing and refusing to follow the teachings of the United States Supreme Court in Screws v. United States, 325 U. S. 91, 104, that the statutory protection of the Federal Civil Rights Acts, extends to every right "which has been made specific by the express terms of the Constitution and Laws of the United States or by decisions interpreting them."

4. That the United States District Court, Eastern District of Illinois, erred in failing and refusing to follow the teachings of the United States Supreme Court in Robinson v. California, 370 U. S. 660, 666, and Mr. Justice Douglas in concurring at 370 U. S. 675, that the Eighth Amendment was applicable to the States, as said in Wright v. McMann, 387 F. 2d 519, 522, and Jackson et al. v. Bishop (8 Cir. December 9, 1968), slip opinion page 11, Nos. 18957-59.

5. That the United States District Court, Eastern District of Illinois, erred in failing and refusing to follow the teachings of the United States Supreme Court in Cooper v. Pate, 378 U. S. 546, that upon a Motion to Dismiss the Court must accept all facts as true, and as set forth and done in Picking v. Pennsylvania Ry. Co., 151 F. 2d 240, 246, cert. denied 332 U. S. 766; Wright v. McMann, 387 F. 2d. 519-522.

6. That the United States District Court, Eastern District of Illinois, Honorable Henry S. Wise, Judge Presiding, has sat in review of prison rules and regulations which he had approved as a Member of the Illinois Parole Board on May 8, 1962, and contained in a Rule Book entitled "Rules and Statutes relating to Parole and Pardons", as distributed in the Illinois State Penitentiary System.

7. That the United States District Court, Eastern District of Illinois, erred in failing and refusing to consider the language of Illinois Statutes of 1868, Ch. 81, Par. 37, which define "solitary confinement" as unusual confinement and therefore within the proscription of the Eighth and Fourteenth Amendments of the Constitution of the United States.

/s/ Francis Haines
Plaintiff, Pro Se
Reg. No. 16348
Box 711
Menard, Ill. 62259

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1969—APRIL SESSION, 1970

No. 17511

FRANCIS HAINES, PLAINTIFF-APPELLANT

v.

OTTO J. KERNER, Former Governor, State of Illinois, Chicago, Illinois; ROSS V. RANDOLPH, Director of Public Safety, State of Illinois, Springfield, Illinois; MAX P. FRYE, Warden; LEWIS C. LENCE, Assistant Warden; JEFFIE BIGGS, Assistant Warden; PAUL V. SYMPSON, Senior Guard Captain; RUSSELL LENCE, Guard Captain; E. ROGERS, Guard Lieutenant; DONALD GENTSCH, Record Clerk; WILLIAM SHEETS, Commissary Officer; PAUL T. DUNCAN, Guard, all of the Illinois State Penitentiary, Menard, Illinois 62259, DEFENDANTS-APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ILLINOIS

OPINION—May 25, 1970

Before KNOCH, *Senior Circuit Judge*, FAIRCHILD, *Circuit Judge*, and GRANT, *District Judge*.*

KNOCH, *Senior Circuit Judge*. Plaintiff-appellant Francis Haines, brought suit in the United States District Court, pursuant to the Civil Rights statutes, Title 28 U.S.C. § 1343(3) and Title 42 U.S.C. § 1981, *in forma pauperis*, to recover a total of $500,000 as damages for deprivation of his rights, under Title 42 U.S.C. §§ 1981, 1983 and 1985(2).

* Judge Grant from the Northern District of Indiana is sitting by designation.

Plaintiff's Complaint states that he is confined in the Illinois State Penitentiary at Menard, Illinois. He describes the defendants as officers and employees of the State of Illinois and as conspiring among themselves and with others, directly or through agents, to deny Plaintiff his Constitutional rights, principally, to be free of cruel and unusual punishments and not to be deprived of liberty or property without due process of law.

As Plaintiff, in his brief, describes the incident out of which this action arose, he was engaged in an argument with two other inmates in the course of which he struck one with a shovel. He states that he refused to explain his action or to discuss the incident with the investigating prison authorities, as a result of which he was placed in solitary confinement for a period of fifteen days. Plaintiff says he is 66 years of age and has a foot disability discernable by X-ray for which he was awarded compensation in a hearing before the Illinois Industrial Commission. He found solitary confinement with its attendant rigorous conditions particularly onerous, and he considers it to be cruel and unusual punishment improperly imposed without a court trial. He was also classified as "C" under the Progressive Merit System, which he explains in his Complaint indicated unsatisfactory behavior and entailed a loss of privileges such as commissary rights and the right to earn "merit time."

The Defendants moved to dismiss the Complaint for failure to state a cause of action on which relief might be granted. The District Judge granted this motion and appeal followed.

State prison officials are vested with wide discretion, and discipline reasonably maintained in state prisons is not subject to our supervisory direction.

Apart from purely conclusory statements, the allegations of Plaintiff's Complaint do not show that the Defendants acting under color of state law or in conspiracy abridged his Constitutional rights, privileges or immunities within the scope of the Civil Rights statutes on which he relies. Cf *Henderson* v. *Pate*, 7 Cir., 1969, 409 F. 2d 507, 508, cert. den. 396 U.S. 914.

The decision of the District Judge is affirmed.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Before Hon. WIN G. KNOCH, Senior Circuit Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. ROBERT A. GRANT, District Judge

No. 17511

FRANCIS HAINES, PLAINTIFF-APPELLANT

vs.

OTTO J. KERNER, Former Governor, State of Illinois, etc., ET AL., DEFENDANTS-APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ILLINOIS

JUDGMENT—May 25, 1970

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Illinois, and was submitted to the Court without oral argument.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the opinion of this Court filed this day.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before Hon. WIN G. KNOCH, Sr. Circuit Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. ROBERT A. GRANT, District Judge

No. 17511

FRANCIS HAINES, PLAINTIFF-APPELLANT

vs.

OTTO J. KERNER, Former Governor, State of Illinois, ET AL., DEFENDANTS-APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ILLINOIS

ORDER DENYING REHEARING—June 19, 1970

On consderation of the petition for rehearing and suggestion that it be heard *en banc* filed in the above-entitled cause, no judge in active service having requested a vote thereon, nor any judge voted to grant the suggestion, and all members of the panel having voted to deny a rehearing,

IT IS ORDERED that the petition for a rehearing in the above-entitled cause be and the same is hereby denied.

SUPREME COURT OF THE UNITED STATES

No. 5940, October Term, 1970

FRANCIS HAINES, PETITIONER

v.

OTTO J. KERNER, Former Governor,
State of Illinois, ET AL.

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is orderd by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 8, 1971

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IN THE

Supreme Court of the United States

No. 70-5025

FRANCIS HAINES,

Petitioner,

v.

OTTO J. KERNER, FORMER GOVERNOR, STATE OF ILLINOIS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

No. 70-5025

FRANCIS HAINES,

Petitioner,

v.

OTTO J. KERNER, FORMER GOVERNOR, STATE OF ILLINOIS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Court of Appeals affirming the dismissal of petitioner's civil action is reported at 427 F.2d 71 (1970), and is printed in the Appendix at pp. 65-66. The opinion of the United States District Court for the Eastern District of Illinois is not reported, and is set forth in the Appendix at pp. 58-60.

JURISDICTION

The judgment of the Court of Appeals was entered on May 25, 1970, and a timely petition for rehearing, with suggestion that it be heard en banc, was denied on June 19, 1970. The petition for writ of certiorari was filed on September 17, 1970, and was granted on March 8, 1971. 401 U.S. 954. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides, in pertinent part:

> "No person shall . . . be compelled in any criminal case to be a witness against himself, . . ."

The Sixth Amendment provides, in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

The Eighth Amendment provides:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment provides, in pertinent part:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

This case also involves 42 U.S.C. § 1983 providing a right of relief in damages and in equity for violations of constitutional rights.

QUESTIONS PRESENTED

1. Did the District Court err in dismissing, without requiring an answer or holding a hearing, a complaint filed by a state prisoner, pro se, against prison officials, which raised grave constitutional questions concerning alleged mistreatment?

2. Did the conditions of solitary confinement in the Illinois State Penitentiary, as administered to a partially disabled, sexagenarian prisoner under the circumstances of this case, constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments?

3. Was petitioner unconstitutionally deprived of fundamental procedural safeguards in the prison disciplinary proceedings?

STATEMENT OF THE CASE

Taking as true the allegations of the complaint, as they must be on a motion to dismiss, the facts are as follows:

Francis Haines, petitioner, has been since 1939, and still is, an inmate of the Illinois State Penitentiary, Menard Branch, serving a life sentence for burglary.

On March 10, 1968, Haines, who was then 66 years old and 30% permanently disabled,[1] and two other inmates, Moore and Doherty, who were then approximately 30 years of age, were assigned to the Inside Yard Gang. One of the defendants herein, Paul T. Duncan, was the officer in charge of that work detail. (A. 14)

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[1]The disability was due to the following foot injuries: Left foot—2nd, 3rd and 4th Cuboid Bones and 3rd Metatarsal fractured, which resulted in an Ankylosis in the Cuboid Bones. Rights foot—vertical fractures in the heel bones, discernable only by an X-ray in a specific position of the foot. Haines added that he had been awarded compensation in a hearing before the Illinois Industrial Commission for these injuries. (App. 14).

Haines and the two younger inmates engaged in an argument in which it seemed to Haines that Moore was urging and inciting Doherty against Haines. Several times it was said by both Moore and Doherty that the "Young Blood" was taking over and that the "Old Blood" like Haines was "done". After this argument had proceeded for a time, Haines returned to work and obtained a shovel for loading cinders on a truck. He banged the shovel on the concrete outside the Yard Gang Shack, in order to dislodge a clod of dirt. (A. 14)

When he entered the shack, Doherty and Moore resumed the argument, during which time Moore was very emphatic that the "Young Blood" such as he were taking over and that Haines had better watch out or he would be hurt. (A. 15)

A little later, Haines entered the bathroom and the other two inmates approached him in a threatening manner and resumed the argument. Following a provocative comment from Doherty, Haines hit him with the shovel, inflicting cuts on his head. Moore and Haines then scuffled briefly. After Officer Duncan took Doherty into the back room to attend his injuries, Moore kept making dire and foreboding threats to Haines to the consequences of his acts. Inmate Orlando, No. 34527, witnessed these events subsequent to Haines' hitting the shovel on the concrete. (A. 15)

Subsequently, Officer Rogers, another defendant herein, took Haines to what is known in the institutional vernacular as the "hole" or solitary confinement, which in recent years the officials call isolation. (A. 15)

Rogers took Haines before Officer Russell Lence, another defendant herein, who was disciplinary officer that day. Haines refused to explain his actions other than to say that he had hit Doherty with the shovel. He was locked in an isolation cell until a report could be had from Duncan. (A. 15-16)

When this report was obtained, Lence and Rogers called Haines before them again and read the report to him. Haines

objected to statements of Duncan that he had hit the shovel on the Yard Gang Shack floor, and refused to discuss the statement of Duncan that he had engaged with the other two men. Lence wanted to know why Haines would hit Doherty and stated that it had been twenty-eight years since Haines had been in the "hole." When Haines refused to talk to these officers he was given fifteen days punishment in isolation, from March 10 to March 25, 1968. (A. 16)

This isolation, "hole," or solitary confinement consisted of dark cells, and the only difference Haines could see in the intervening twenty-eight years between his trips to it were as follows: he was given three (3) blankets instead of two to sleep on a concrete floor; there had been a toilet installed instead of toilet buckets formerly used; he received (2) slices of bread every morning and evening, along with a noon meal, instead of the four (4) slices of bread formerly received. No articles of hygiene were furnished to him, and his false teeth became so rancid he had to leave them out. No towel or soap was furnished.[2]

Following his stay in isolation, Haines was demoted, without any hearing, to "C" grade under the institution's "Progressive Merit System," which entailed the loss of certain unspecified "privileges," including Commissary. (A. 16, 17) HIs chances of obtaining release on parole may also have been adversely affected.

As a result of his confinement in the "hole," Haines suffered great physical anguish and pain to his feet and circulatory trouble in his legs, due to being forced to sleep on the concrete floor. (A. 18)

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[2]Given the liberal construction due this *pro se* complaint, Dioguardi v. Durning, 139 F.2d 774 (2d Cir. 1944); Picking v. Penn. Ry. Co., 151 F.2d 240, 244 (3rd Cir. 1945), it may be fair to infer, that Haines was also deprived of contact with the outside, recreation, reading, writing, showers, and periodic examinations by a member of the medical staff.

On July 1, 1968, Haines filed a complaint in the United States District Court for the Eastern District of Illinois, seeking damages, declaratory judgment and such other and further relief as justice and equity may require, against officers Duncan, Russell Lence, Rogers, and Sheets (the commissary officer), the members of the Progressive Merit System of the Illinois State Penitentiary at Menard, the Director of the Illinois Department of Public Safety, who allegedly made the rules and regulations pertaining to the Illinois State Penitentiary, and the former Governor of the State of Illinois, who allegedly was superior to all of the other defendants, and could have cured all defects in their actions by executive order. (A. 7-19)

On defendants' motion to dismiss (A. 20-24), the District Court dismissed the action without any hearing (A. 58-60), and the Court of Appeals affirmed (A. 65-66), stating that–

> "State prison officials are vested with wide discretion, and discipline reasonably maintained in state prisons is not subject to our supervisory direction."

On March 8, 1971, this Court granted Haines' petition for a writ of certiorari.

SUMMARY OF ARGUMENT

I.

When prison officials violate the paramount federal constitutional right of prisoners not to be treated like animals, without justification, the federal courts may not abdicate their remedial jurisdiction, clearly conferred by Congress, on the ground that "discipline reasonably maintained in State prisons is not subject to our supervisory direction." The *pro se* complaint in this case sufficiently stated a claim of "excessive" or "unnecessary cruelty" constituting unconstitutional "cruel and unusual punishment," so as to preclude summary dismissal by the District Court without requiring an answer from defendants or holding an evidentiary hearing, if necessary.

II.

Among the fundamental rights retained by prisoners are their privilege against compelled self-incrimination and their right to assistance of counsel. Without adequate protection of these rights in a prison disciplinary proceeding where the misconduct alleged also constitutes a prosecutable offense, prisoners are effectively denied their rights, guaranteed by Due Process, to a meaningful opportunity to explain away the accusation. In this case, plaintiff was precluded from presenting a substantial claim of self-defense, as either a complete defense or in mitigation of punishment.

ARGUMENT

I.

THE CONDITIONS OF SOLITARY CONFINEMENT IN THE ILLINOIS STATE PENITENTIARY, AS ADMINISTERED TO A PARTIALLY DISABLED, SEXAGENARIAN PRISONER UNDER THE CIRCUMSTANCES OF THIS CASE, CONSTITUTED CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS.

The broad power of a State to maintain discipline in its prisons is not here challenged, nor is the validity of the practice of solitary confinement, per se, drawn in question in the instant case.[3] Rather we raise, in Point I, only the narrow

---

[3]See, e.g., Burns v. Swenson, 430 F.2d 771 (8th Cir. 1970). Although solitary confinement has been described as one of "the main traditional disciplinary tools" of our prison systems, President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections 50-51 (1967), the Manual of Correctional Standards of the American Correctional Association contains a candid recognition by prison officials themselves that "[p]erhaps we have been too dependent on isolation or solitary confinement as the principal method of handling the violators of institutional rules. Isolation may bring short-term conformity for some, but brings increased disturbances and deeper grained hostility to more." Id., at 413. It has long been recognized that solitary confinement cannot

issue whether, absent a showing of justification for the specific incidents of confinement in this case, the totality of dehumanizing, degrading and debased circumstances imposed upon an elderly, partially disabled, prisoner for fifteen days, in a dark cell, with three blankets to sleep on a concrete floor, a toilet, but no towel or soap or any articles of personal hygiene, two slices of bread morning and evening, along with a noon meal, and where his false teeth became so rancid he had to leave them out, violated petitioner's paramount federal constitutional right to be free from cruel and unusual punishment.[4]

As this Court stated, in *Johnson v. Avery*, 393 U.S. 483, 486 (1969),

> "There is no doubt that discipline and administration of state detention facilities are state functions. They are subject to federal authority only where paramount federal constitutional or statutory rights supervene. It is clear, however, that in instances where state regulations applicable to inmates of prison facilities conflict with such rights, the regulations may be invalidated."[5]

In *Brooks v. Florida*, 389 U.S. 413 (1967), this Court rejected, as involuntary, a state prisoner's confession to participating in a riot, which was obtained after he had been confined in a punishment cell for fourteen days under extremely onerous and disgusting conditions, which included

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be considered a mere custodial matter, and that it can cause mental illness, induce suicidal tendencies, and interfere with the possibility of rehabilitation. See, In Re Medley, 134 U.S. 160, 167-68 (1890).

[4]The command of the Eighth Amendment banning "cruel and unusual punishments" is applicable to the States by reason of the Due Process Clause of the Fourteenth Amendment. Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 463 (1947); Robinson v. California, 370 U.S. 660 (1962).

[5]The Court there relied upon Lee v. Washington, 390 U.S. 333 (1968), in which the practice of racial segregation of prisoners was held invalid to the extent that it could not be justified by "the necessities of prison discipline and security." Id., at 334.

restricted diet, no bed or other furnishings, no external window, and lack of contact with the outside. The *per curiam* opinion observed: "The record in this case documents a shocking display of barbarism which should not escape the remedial action[6] of this Court." *Id.*, at 415.

This Court has said that "[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man." *Trop v. Dulles*, 356 U.S. 86, 100 (1958). The guarantee is a flexible one, drawing its meaning from "the evolving standards of decency that mark the progress of a maturing society." *Id.*, at 101. *Weems v. United States*, 217 U.S. 349, 373 (1910) "The Eighth Amendment expresses the revulsion of civilized man against barbarous acts—the 'cry of horror' against man's inhumanity to his fellow man." *Robinson v. California*, 370 U.S. 660, 668, 676 (1962) (Douglas, J. concurring). Although these notions may appear to be somewhat subjective, a more precise and judicially manageable standard was articulated long ago; "[I]t is safe to affirm that punishment of torture . . . and all others in the same line of *unnecessary cruelty*, are forbidden . . ." *Wilkerson v. Utah*, 99 U.S. 130, 136 (1878) (emphasis supplied).

The lower federal courts, which have been presented with constitutional challenges to medieval dungeon-like conditions in some of the worst solitary confinement cells, have recognized the States' legitimate interest in maintaining prison discipline, but have not hesitated to strike down instances of hard core "inhuman treatment,"[7] which go far beyond the actual necessities of discipline and security.

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[6] "Remedial action," in the form of damages or equitable relief, has been explicitly authorized by Congress, in 42 U.S.C. § 1983, for deprivation of constitutional rights "under color of" state law. Cf. Monroe v. Pape, 365 U.S. 167 (1961); Cooper v. Pate, 378 U.S. 546 (1964); Houghton v. Shafer, 392 U.S. 639 (1968). See also, Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, ___ U.S. ___, 39 U.S.L. Week 4821 (June 21, 1971).

[7] Trop v. Dulles, supra, at 100 n. 32.

See, *Wright v. McMann*, 387 F.2d 519 (2d Cir. 1967); *Knuckles v. Prasse*, 302 F.Supp. 1036, 1061-62 (E.D. Pa. 1969); aff'd, 436 F.2d 1255 (3rd Cir. 1971); *Hancock v. Avery*, 301 F. Supp. 786 (M.D. Tenn. 1969); *Holt v. Sarver*, 300 F. Supp. 825 (E.D. Ark. 1969); *Jordan v. Fitzharris*, 257 F. Supp. 674 (N.D. Calif. 1966); *Barnes v. Hocker*, No. R-2071 (D. Nev. Sept. 5, 1969).[8]

In *Wright v. McMann, supra*, the Second Circuit reversed the dismissal, without a hearing, of a prisoners' complaint about unsanitary and degrading conditions in a solitary confinement cell in New York's Clinton Prison, and said:

> We are of the view that civilized standards of humane decency simply do not permit a man . . . to be deprived of the basic elements of hygiene such as soap and toilet paper. The subhuman conditions alleged by Wright to exist in the "strip cell" at Dannemora could only serve to destroy completely

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[8]There were some differences among the particular circumstances involved in the above cited cases. For example, *Hancock*, *Jordan* and *Knuckles* involved cells without light, while in *Holt*, *Wright* and *Barnes* the cells were lighted. In *Barnes*, the inmate slept on an iron bunk, while in *Jordan* he had a canvas mat, in *Knuckles* they had blankets on the floor. In *Brooks* the inmate was fed pea and carrot soup three times per day; in *Hancock* he was fed one regular meal and bread twice; in *Holt* he received a wholesome and sufficient but unappetizing diet; in *Barnes*, *Jordan* and *Wright*, they apparently received the regular institution diet. In *Brooks* and *Holt* the cells were overcrowded, while *Jordan* and *Hancock* involved true solitary confinement. In all the cases, the prisoners were deprived of the minimal comforts and institutional privileges that may make prison life tolerable for a flexible man. Significantly, none of the cases involved the imposition of such onerous conditions upon a partially disabled, elderly man, as here.

> the spirit and undermine the sanity of the prisoner. The Eighth Amendment forbids treatment so foul, so inhuman and so violative of basic concepts of decency.[9]

The Court of Appeals did not rule out the possibility "that in exceptional circumstances it might be necessary to take from a prisoner all objects with which he could harm himself or others," but it observed, "apparently no determination was made that this *particular* prisoner was or would have become violent." That question of fact was left for resolution upon remand. 387 F.2d at 526 n. 15.

In *Jordan v. Fitzharris, supra,* the District Court declared that–

> "When . . . the responsible authorities in the use of the strip cells have abandoned elemental concepts of

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[9]The Second Circuit's recent en banc decision in Sostre v. McGinnis, ___ F.2d ___ (2d Cir. Feb. 24, 1971), is not to the contrary. In *Sostre,* the Court enumerated six factors raising the prisoner's confinement "several notches above those truly barbarous and inhumane conditions condemned elsewhere (*id.*, at ___). They were: (1) the prisoner's diet, which was the same (except for desserts) as in the general prison population; (2) the availability or rudimentary implements of personal hygiene; (3) the opportunity for exercise in the open air, compare, Krist v. Smith, 309 F. Supp. 497, 501 (S.D. Ga. 1970); (4) opportunity to participate in group therapy; (5) availability of reading matter from the prison library and unlimited numbers of law books; and (6) the constant possibility of communication with other prisoners. In addition, the Court pointed out that the prisoner always had adequate light for reading (*id.* at ___), full access to legal materials (*id.*) and a diet of 2800-3300 calories a day (*id.* at ___). Further, the Court noted the absence of any testimony that solitary threatened the mental or physical health of the inmate and found that a physician visited him every day (*id.* at ___, n. 24). Finally, the Court said that the prisoner aggravated his confinement by refusing to participate in group therapy (*id.* at ___). None of these factors explicitly relied upon by the Second Circuit is present in the instant case. In virtually every feature, Illinois-style solitary fails the test, particularly in view of petitioner's age and physical disabilities. As the Court in *Sostre* observed, in n. 23, "In some instances, depending upon the conditions of the segregation, and the mental and physical health of the inmate, five days or even one day might prove to be constitutionally intolerable."

> decency by permitting conditions to prevail of a shocking and debased nature, then the courts must intervene promptly . . . to restore the primal rules of a civilized community. . . ." *Id.*, at 680.

And, in *Sinclair v. Henderson*, 435 F.2d 125, 126 (5th Cir. 1971), the Fifth Circuit observed:

> "Although federal courts are reluctant to interfere with the internal operation and administration of prisons, we believe that the allegations appellant has made go beyond matters exclusively of prison discipline and administration; and that the court below should adjudicate the merits of the appellant's contentions of extreme maltreatment."

We recognize that some form of isolation of severely troublesome or violent prisoners is occasionally needed in order to maintain order, and we concede that prison officials have an area of administrative discretion in dealing with inmates who are in fact disruptive. However, as one Court of Appeals has said,

> "acceptance of the fact that incarceration, because of inherent administrative problems, may necessitate the withdrawal of many rights and privileges does not preclude recognition by the courts of a duty to protect the prisoner from unlawful and onerous treatment of a nature that, of itself, adds punitive measures to those legally meted out by the court." *Jackson v. Godwin*, 400 F.2d 529, 532 (5th Cir. 1968).

Thus, while prison officials are entitled to some administrative leeway, this "does not eliminate the need for reasons imperatively justifying the particular retraction of rights challenged at bar." *Barnett v. Rodgers*, 410 F.2d 995, 1000-1 (D.C. Cir. 1969).

The record in this case[10] is entirely barren of any indication by the State of Illinois that the unusually[11] cruel inhuman conditions imposed upon Haines, over and above the mere fact of isolation, were actually necessary for the preservation of order, or specifically, to contain this partic-

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[10]The District Court dismissed the *pro se* drafted complaint without requiring any answer from the defendants, either as to the truth of their alleged acts, or in justification therefor, and without giving Haines any hearing. However, as Professor Moore has stated the rule, "[A] complaint should not be dismissed for insufficiency unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim." 2A Moore, FEDERAL PRACTICE ¶ 12.08, at 2271-74 (2d ed. 1968). Accord, Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Moreover, "[I]t is inexpedient to determine grave constitutional questions upon a demurrer to a complaint, or upon an equivalent motion, if there is a reasonable likelihood that the production of evidence will make the answer to the questions clearer." Borden's Farm Products Co., Inc. v. Baldwin, 293 U.S. 194, 213 (1934) (Stone & Cardozo JJ., concurring). See also, Cooper v. Pate, 378 U.S. 546 (1964). With the assistance of counsel, and the testimony of penological experts, e.g., Jackson v. Bishop, 404 F.2d 571, 575 (8th Cir. 1968), Haines, as well as the defendants, will have an opportunity, upon remand, to develop all of the facts fully on the record in the District Court. After the trial upon remand, in *Wright v. McMann*, supra, Judge Foley remarked that the record is "revealing and eye-opening . . . a portrayal of the real thing; it is prison life as it is . . . a facet of New York State prison discipline kept covered too long from the public view." 321 F. Supp. 127, 131, 132 (N.D. N.W. 1970).

[11]It is interesting to note that the relevant 1867 Illinois statute, quoted in the complaint (A. 12), which has since been repealed, specifically characterized, as "unusual punishment," "solitary confinement in a dark cell and deprivation of food except bread and water until such convict shall be reduced to submission and obedience" (former ch. 81, § 37). Of course, the antiquity of this barbaric practice does not insulate it from judicial scrutiny. As recently as 1970, this Court reiterated "[t]he need to be open to reassessment of ancient practices other than those explicitly mandated by the Constitution." Williams v. Illinois, 399 U.S. 235, 240 (1970). "[N]ew cases expose old infirmities which apathy or absence of challenge has permitted to stand." *Ibid.*, at 245.

ular prisoner, who had not been in the "hole" for the past *twenty-eight* years.

> "A punishment may be considered cruel and unusual when, although applied in pursuit of a legitimate penal aim, it goes beyond what is necessary to achieve that aim; that is, when a punishment is *unnecessarily cruel* in view of the purpose for which it is used." *Weems v. United States,* 217 U.S. 349, 370 (1910) (emphasis supplied); *Dearman v. Woodson,* 429 F.2d 1288, 1290 (10th Cir. 1970); *Hancock v. Avery,* 301 F. Supp. 786, 791 (M.D. Tenn. 1969); *Jordan v. Fitzharris,* 257 F. Supp. 674, 679 (N.D. Cal. 1966).[12]

There is neither allegation nor evidence that Illinois considers it essential or even useful to confine an elderly, partially disabled man alone in total darkness, to deprive him of rudimentary articles of personal hygiene, a bed, fresh air, exercise, and medical attention, and to severely restrict his diet. Indeed, practices in other jurisdictions, which are of "substantial probative value" in ascertaining whether a particular restriction is necessary to some penal interest,[13] tend to show that treating a man like rubbish, under the dehumanizing conditions of solitary which existed here, is not only unnecessary to accomplish the purpose of isolation, but is also futile and self-defeating, and interferes with the primary objective of rehabilitating offenders.[14]

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[12]The imposition of such severe mistreatment for exercising the basic right of self-defense, would seem to be an impermissible penalty for engaging in legally protected activity, cf. Sostre v. McGinn, supra, or at least such grossly excessive punishment in relation to Haines' "offense," as to violate the "precept of justice that punishment for crime should be graduated and proportioned to offense." Weems v. United States, 217 U.S. 349, 367 (1910). See, United States ex rel. Hancock v. Pate, 223 F. Supp. 202, 205 (N.D. Ill. 1963).

[13]Brown v. Peyton, 437 F.2d 1228 (4th Cir. 1971).

[14]A survey questionnaire (Appendix "A" to this Brief) has been mailed to each State's Department of Corrections, inquiring as to the use and conditions of solitary confinement in state prisons. The

For example, the New York regulations, which were drafted in the context of litigation,[15] establish minimum standards for segregated confinement and provide for adequate bedding, hygiene, food, recreation, correspondence and visiting.[16] The Missouri regulations, also drafted during the course of litigation,[17] require heat, ventilation, and natural and artificial light in "seclusion" cells, and, further, provide for rules that are the same as in the general population.[18] The State of Maine, in response to a lawsuit,[19] recently amended its statute governing solitary confinement to provide that "adequate sanitary and other conditions required for the health of the inmate shall be maintained," that "a sufficient quantity of wholesome and nutritious food" shall be supplied, that medical examinations be conducted every twenty-four hours[20] and reports filed, and that

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replies received so far indicate that the particular degrading circumstances presented in the case at bar are not at all widespread. The complete results of the survey will be provided to this Court as soon as they are available.

[15]See, Wright v. McMann, 387 F.2d 519 (2d Cir. 1967), on remand, 321 F. Supp. 127 (N.D. N.Y. 1970); Rodriguez v. McGinnis, 307 F. Supp. 627 (N.D. N.Y., 1969); rev'd, _____ F.2d _____ (2d Cir. March 16, 1971); Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970), aff'd in part and reversed in part, _____ F.2d _____ (2d Cir. Feb. 24, 1971), Dritsky v. McGinnis, 313 F. Supp. 1247 (N.D. N.Y. 1970); Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970).

[16]New York Department of Correctional Services, Regulations for Special Housing Units, pt. 301 (effective Oct. 19, 1970).

[17]Burns v. Swenson, 288 F. Supp. 4 (W.D. Mo. 1967).

[18]Missouri State Penitentiary Rules and Procedures, Personnel Informational Pamphlet.

[19]Inmates of the Maine State Prison v. Robbins, Civil No. 11-187 (D. Me. filed Aug. 31, 1970).

[20]Some conditions of confinement may so contravene civilized standards that even if their "infliction is surrounded by appropriate safeguards," Talley v. Stephens, 247 F. Supp. 683, 689 (E.D. Ark. 1965), which are absent here, it will not save the practice from con-

if "the recommendations of the prison physician or consulting psychiatrist are not carried out by the warden, a report thereof, with the reasons therefor, shall be forwarded by the warden to the Director of Corrections."[21] The Federal Bureau of Prisons, too, has mandated relatively humane conditions for segregated confinement.[22] See also, AMERICAN CORRECTIONAL ASSOCIATION, MANUAL OF CORRECTIONAL STANDARDS 414-15 (3d ed. 1966).

The aforementioned developments underscore the stark fact that judicial intervention to protect the paramount federal constitutional rights of prisoners to be treated as human beings, as opposed to animals, has been necessary,

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stitutional infirmity. See Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968), where the Arkansas practice of whipping prisoners, as a disciplinary measure, was held to run afoul of the Eighth Amendment, notwithstanding the promulgation of safeguards. In an opinion by Circuit Judge, now Justice, Blackmun, the Court of Appeals stated. "The strap's use, irrespective of any precautionary conditions which may be imposed, offends contemporary concepts of decency and human dignity and precepts of civilization which we profess to possess; and . . . also violates those standards of good conscience and fundamental fairness enunciated by this court. . . . *Id.*, at 579.

[21]P. L. 1971, Chapter 397 (June 4, 1971), Amending Title 34, § 709, Rev. Stat.

[22]U.S. Bureau of Prisons, Policy Statement 7400.5, app. A, at 2 (Nov. 28, 1966) provides in part:

> "The quarters used for segregation shall be well ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times. . . . All inmates shall be admitted to segregation (after thorough search for contraband) dressed in normal institution clothing and shall be furnished a mattress and bedding. In no circumstances shall an inmate be segregated without clothing except when prescribed by the Chief Medical Officer for medical or psychiatric reasons. . . . [S]egregated inmates shall be fed three times a day on the standard ration and menu of the day for the institution. . . . Segregated inmates shall have the same opportunities to maintain the level of personal hygiene available to all other inmates. . . ."

not only to provide individual redress,[23] but also to get prison officials moving to attain minimum constitutional standards in practices, facilities and services. E.g. *Holt v. Sarver*, 309 F. Supp. 362, 385 (E.D. Ark.), aff'd, _____ F.2d _____(8th Cir., May 5, 1971); *Jones v. Wittneberg*, 323 F. Supp. 93 (N.D. Ohio 1971).[24] It appears that the so-called "hands off" doctrine,[25] under which the courts, including the Seventh Circuit below, granted prison officials a virtual "immunity from judicial scrutiny led to a tradition of lawlessness in the corrections phase of the criminal process."[26] It is, therefore, imperative that the courts cease to ignore valid claims by prisoners of unconstitutional treatment, which threaten their life and what little liberty they possess.

> "Although it might, indeed, be the easier course to dismiss this amended complaint as to these defendants, we cannot flinch from our clear responsibility to protect rights secured by the Federal Constitution."[27]

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[23] In view of the coercive effects of confinement in a punishment cell under unsanitary and degrading conditions, which this Court found in Brooks v. Florida, supra, the granting of affirmative relief from such treatment may operate, not only to enforce the Eighth Amendment, but also to protect a prisoner, who is also a potential accused, against forced self-incrimination. Cf. Screws v. United States, 325 U.S. 91 (1945); United States v. Jones, 207 F.2d 185 (5th Cir. 1953).

[24] In finding the conditions in the Toledo jail to be unconstitutionally cruel, the District Court there said: "The cruelty is a refined sort, much more comparable to the Chinese water torture than to such crudities as breaking on the wheel." 323 F. Supp., at 99.

[25] See, *Note, Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 Yale L.J. 506 (1963).

[26] Turner, *Establishing the Rule of Law in Prisons: A Manual For Prisoners' Rights Litigation*, 23 Stan. L. Rev. 473 (Feb. 1971).

[27] Inmates of the Cook County Jail v. Tierney, No. 68 C 504 (N.D. Ill. Aug. 28, 1968, Hoffman, J.)

As this Court appropriately observed in *McNeese v. Board of Education*, 373 U.S. 668, 675 n. 6 (1963):

> "We yet like to believe that wherever the federal courts sit, human rights under the federal Constitution are always a proper subject for adjudication."

This case should, therefore, be remanded to the District Court[28] for the purpose of developing the record more fully, so that it can be determined whether Haines was actually subjected by prison officials to "excessive" or "unnecessary cruelty", in violation of Eighth Amendment standards.

II.

PETITIONER WAS UNCONSTITUTIONALLY DEPRIVED OF PROCEDURAL DUE PROCESS OF LAW IN THE PRISON DISCIPLINARY PROCEEDINGS.

"'[W]ithin the limits of practicability' . . . a state must afford to all individuals a *meaningful* opportunity to be heard if it is to fulfill the promise of the Due Process Clause." *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971) (emphasis supplied). In *Goldberg v. Kelly*, 397 U.S. 254, 262-63 (1970), this Court said:

> "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. . . .'

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[28] In view of the fact that neither the District Court nor the Court of Appeals reached the question of how far along the chain of administrative command liability extends, petitioner has not briefed that issue here. However, on remand, that matter would be appropriate for inquiry. See generally, Monroe v. Pape, 365 U.S. 167, 187 (1961): "Section [1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." See also, Joseph v. Rowlen, 402 F.2d 367, 370 (7th Cir. 1968) ("good faith" no defense to arrest without probable cause).

> [C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.'"

Many years ago, this Court observed, in an analogous context:

> "Clearly the end and aim of an appearance before the court must be to enable an accused probationer to explain away the accusation.... This does not mean that he may insist upon a trial in any strict sense.... It does mean that there shall be an inquiry so fitted in its range to the needs of the occasion as to justify the conclusion that discretion has not been abused by the failure of the inquisitor to carry the probe deeper."[29]

The lower federal courts, which have been presented with claims for procedural due process in prison disciplinary proceedings, where substantial deprivations such as solitary confinement or loss of parole eligibility or good time are to be visited upon a prisoner, have adopted a similar approach. See, *Sostre v. McGinnis*, _____ F.2d _____ (2d Cir. Feb. 24, 1971) (facts should be "rationally determined" and prisoner should be "afforded a reasonable opportunity to explain his actions"); *United States ex rel. Campbell v. Pate*, 401 F.2d 55, 57 (7th Cir. 1968) ("the relevant facts... must not be ... capriciously or unreliably determined."); *Nolan*

[29]Escoe v. Zerbst, 295 U.S. 490, 493 (1935). See also, Mempa v. Rhay, 389 U.S. 128 (1967). In an opinion by former Justice Clark, sitting as a Circuit Judge, the Court of Appeals, in Hahn v. Burke, 430 F.2d 100, 104 (7th Cir. 1970), cert. denied, 401 U.S. _____ (Apr. 26, 1971), held that the Due Process Clause guarantees to state probationers a "reasonable opportunity to explain away the accusation." Accord, Goolsby v. Gagnon, 322 F. Supp. 460, 464 (E.D. Wis. 1971), Bransted v. Schmidt, 324 F. Supp. 1232, 1236 (W.D. Wis. 1971), and State ex rel. Johnson v. Cady, 185 N.W.2d 306 (Wis. 1971) (State parolees entitled to the same "reasonable opportunity to explain away the accusation").

v. Scafati, 430 F.2d 548 (1st Cir. 1970) ("sufficient safeguards" necessary where punishment "sufficiently great"); *Carothers v. Follette*, 314 F. Supp. 1014 (S.D. N.Y. 1970) ("an opportunity to present evidence before a relatively objective tribunal" is required); *Morris v. Travisono*, 310 F. Supp. 857 (D.R.I. 1970) (consent decree embodying wide range of procedural safeguards).[30]

On its face, it might appear that Haines was afforded an opportunity to explain his actions. A careful examination of the underlying circumstances, however, reveals that the choice was illusory, and that he was effectively precluded from presenting his substantial claim of self-defense.[31]

Where, as here, the disciplinary infraction charged also constitutes a prosecutable offense,[32] an inmate who elects to discuss the matter with prison authorities risks possible self-incrimination.[33] On the other hand, if he elects to stand on his constitutional right to remain silent, and he is unrepresented, then he is precluded from explaining his

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[30] See also, Federal Bureau of Prisons, Policy Statement No. 7400.6 (Dec. 1, 1966); Missouri State Penitentiary Rules and Procedures, Personnel Information Pamphlet pp. 1-7; President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections 86 (1967); American Law Institute, Model Penal Code, Article 304.7(2) (Proposed official draft 1962).

[31] Ill. Rev. Stat., ch. 38 §§ 7-1, 7-13; United States ex rel. Hancock v. Pate, 223 F. Supp. 202 (N.D. Ill. 1963).

[32] Ill. Rev. Stat., ch. 38 § 12-1 (assault), § 12-3 (battery).

[33] Ill. Rev. Stat., ch. 108 § 118 provides in pertinent part: "When any crime is committed within any division or part of the penitentiary system by any person confined therein, cognizance thereof shall be taken by any court of the county wherein such division or part is situated having jurisdiction over the particular class of offenses to which such crime belongs. Such court shall try and punish the person charged with such crime in the same manner and subject to the same rules and limitations as charged with crime in such county." A prisoner's fear of potential prosecution for crimes committed in prison cannot be considered speculative. See, e.g., People ex rel. Conn. v. Randolph, 35 Ill. 2d 24, 219 N.E. 2d 337 (1966).

actions. His dilemma is even worse than the normal *Miranda*[34] situation, where the accused loses nothing by remaining silent.

It may be true, as a matter of law, that any statements Haines would have made under those coercive circumstances, and without prior admonitions as to his constitutional rights concerning counsel and self-incrimination, would have been inadmissible in any future criminal proceeding based upon the conduct for which he was being interrogated. See, *Garrity v. New Jersey*, 385 U.S. 493 (1967); *Melson v. Sard*, 402 F.2d 653 (D.C. Cir. 1968) (relying upon *Simmons v. United States*, 390 U.S. 377, 394 (1968)); *Mathis v. United States*, 391 U.S. 1 (1967).[35]

However, absent an assurance that his statements could not be used against him, it cannot be assumed that Haines was aware of any implicit "use immunity"[36] he would enjoy if criminal charges were brought against him. Cf. *Gardner v. Broderick*, 392 U.S. 273, 278-79 (1968).

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[34]Miranda v. Arizona, 384 U.S. 436 (1966).

[35]See also, People v. Dorado, 62 Cal. 2d 338, 398 F.2d 361, 42 Cal. Rptr. 169, cert. denied, 381 U.S. 937 (1965); Blyden v. Hogan, 320 F. Supp. 513 (S.D. N.Y. 1970); Clutchette v. Procunier, No. C-70-2497 AJZ (N.D. Cal. June 21, 1971); Opinion of New York Attorney General, 8 Cr. L. Rptr. 2486 (Feb. 11, 1971) (*Miranda* warnings required in prison disciplinary proceedings where misconduct constitutes a crime); United States Bureau of Prisons, Policy Statement 2001.1 (Feb. 19, 1968) (requires warning of rights, including counsel and protection against self-incrimination).

[36]If this Court eventually holds that "transactional immunity", which was never offered to Haines, is constitutionally required, then Haines had even further justification for refusing to waive his privilege against compelled self-incrimination. See generally, Piccirillo v. New York, 400 U.S. 548, 562 (1971) (Brennan J. dissenting); In Re Korman, _____ F.2d _____, 9 Cr. L. Rptr. 2161 (7th Cir. May 20, 1971); In Re Kinoy Testimony, _____ F. Supp. _____, 8 Cr. L. Rptr. 2327 (S.D. N.Y. Jan. 29, 1971); Counselman v. Hitchcock, 142 U.S. 547, 586 (1892).

Haines could have been afforded a realistic opportunity to explain his actions, under a number of alternative methods. The officials could have advised him that any statements made by Haines in the prison disciplinary proceedings would be inadmissible in any subsequent criminal proceeding, thereby removing any legitimate fear of incrimination. Cf. *Melson v. Sard, supra.*[37] Or, Haines could have been afforded representation by another person,[38] who would be able to relate Haines' version of the events in question without the personal risk of incrimination.[39] Or, the officials could have investigated further and obtained favorable information from inmate witness Orlando. Cf., *Washington v. Texas,* 388 U.S. 14 (1967); *Giles v. Maryland,* 386 U.S. 66 (1967).

Barred from any of these alternative protections, Haines was effectively deprived of a meaningful opportunity, guaranteed by due process, to present a valid defense to the disciplinary charge, on the issues of both guilt and severity of punishment. This case should, therefore, be remanded to the District Court for a determination of the extent to which Haines' injuries, from confinement in the degrading punishment isolation cell for fifteen days, resulted from the denial of fundamental procedural safeguards in the prison disciplinary proceedings.[40]

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[37]But see, Note 35, *supra.*

[38]See, Mempa v. Rhay, 389 U.S. 128 (1967) (counsel); United States v. Wade, 388 U.S. 218, 238 n. 27 (1967) (counsel substitute); Johnson v. Avery, 393 U.S. 483 (1969) (inmate legal assistance); Morris v. Travisono, 310 F. Supp. 857, 872 (D.R.I. 1970) (staff member advocate).

[39]Clutchette v. Procunier, *supra;* cf., McGautha v. California, _____ U.S. _____, 39 U.S. L. Week 4529, 4540 n. 20 (May 3, 1971).

[40]Haines also has apparently claimed that his punishment of solitary confinement cell and demotion to "C" grade was based in part upon his refusal to discuss the shovel incident with officials. However, he may not constitutionally be subjected to such a drastic penalty for refusal to waive his constitutional privilege against com-

CONCLUSION

When the Courts summarily close their doors to valid prisoners' claims of violations of their paramount federal constitutional rights, involving extreme maltreatment and procedural unfairness, a climate is created in which horrendous absues are permitted and encouraged to flourish in the nation's penal institutions, with calamitous results for the rehabilitative process. We do not suggest that the federal courts should be prime movers in the growing prison reform movement. However, where prisoners are subjected to hard core inhuman treatment, and are denied fundamental procedural safeguards, which deprivations are not justified by the necessities of prison discipline and security, and which infringe upon constitutionally protected liberties, then the courts must exercise their remedial jurisdiction, clearly conferred by Congress, to establish a due process minimum level of human dignity and procedural fairness, below which the states may not go.

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pelled self-incrimination. Cf., Spevack v. Klein, 385 U.S. 511 (1967); Gardner v. Broderick, 392 U.S. 273 (1968); Uniformed Sanitation Men's Association v. Commissioner, 392 U.S. 280 (1968). It cannot fairly be said that Haines "waived" his fundamental right to remain silent after acknowledging that he had hit Doherty with the shovel. As this Court observed, in Miranda v. Arizona, 384 U.S. 436, 445 (1966):

> "The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned."

Since the defendants did not provide a statement of their reasons for their harsh disciplinary action against Haines, compare, Goldberg v. Kelly, 397 U.S. 254, 271 (1970), it must be assumed for present purposes, until clarified upon remand, that Haines was penalized for an impermissible reason. Cf., Clay (Ali) v. United States, _____ U.S. _____, 39 U.S. L. Week 4873, 4875 (June 28, 1971).

For the foregoing reasons, the judgment below should be reversed, and the case remanded to the District Court for further proceedings.

Respectfully submitted,

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July, 1971

APPENDIX A

Gentlemen:

The questions which appear below deal with the use and conditions of solitary confinement in state prisons. This information will be presented to the United States Supreme Court during an appeal scheduled for the Fall of this year. Your answers, when compiled with those of the forty-nine other states will enable the Court to view this important issue from a national perspective. We will appreciate your candid and prompt reply.

Thank you.

Steven Burton

Questions

A. State:_____

B. Official Title of Answering Party: _____

_____

1. Solitary confinement is presently used in our State Prisons. Yes ( ) No ( )

2. Solitary cells are, lighted ( ) without light ( )

3. Prisoners in solitary are provided with: (check where appropriate)

(a)	bed ( )	(f)	wash bowl ( )
(b)	mattress ( )	(g)	towel ( )
(c)	running water ( )	(h)	other elements of personal hygiene ( )
(d)	soap ( )		
(e)	toilet ( )	(i)	clothes ( )

Comment:_____

_____

4. Prisoners in solitary receive
   (a) psychiatric visit ( )
   (b) physician visit ( )
   (c) shave and shower—daily ( ); weekly ( ); none ( ); if other, please explain_____

_____

(d) exercise or recreation daily ( ); weekly ( ); none ( ).

(e) regular diet ( ); limited diet ( ); bread and water ( ).

5. Prisoners in solitary are permitted

(a) to communicate with other prisoners
(b) to receive mail
(c) to send mail
(d) to have reading material: Legal ( ) non-legal ( )

6. Maximum time spent in solitary

(a) 1 week ( ); 2 weeks ( ); a month ( ); unlimited ( ).
(b) requirement for release: _____

_____

7. Reasons for prisoner being sent to solitary

1. _____
2. _____
3. _____

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SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 70-5025

FRANCIS HAINES,

Petitioner,

vs.

OTTO J. KERNER, Former Governor, State of Illinois, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE RESPONDENTS

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IN THE

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vs.

OTTO J. KERNER, Former Governor, State of Illinois, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit affirming the dismissal of petitioner's civil rights complaint is reported at 427 F. 2d 71 (7th Cir. 1970) and reproduced in the Appendix at pp. 65-66. The opinion of the United States District Court for the Northern District of Illinois is not reported and is set forth in the Appendix at pp. 58-60.

JURISDICTION

The petition for writ of certiorari was filed on September 17, 1970 and was granted on March 8, 1971 at 401 U.S. 954. The jurisdiction of this Court was invoked pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the Constitution of the United States provides, in pertinent part:

> "No person shall . . . be compelled in any criminal case to be a witness against himself, . . ."

The Sixth Amendment provides, in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."

The Eighth Amendment provides:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment provides, in pertinent part:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

STATUTORY PROVISIONS

Title 42, § 1983, United States Code:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit, in equity, or other proper proceeding for redress.

Questions Presented For Review

1. Whether the circumstances of petitioner's confinement in the isolation unit of the Illinois State Penitentiary at Menard, for a serious violation of prison rules, constituted cruel and unusual punishment?

2. Whether the prison disciplinary procedures by which petitioner was confined after he admittedly struck another inmate over the head with a shovel are commensurate with due process of law.

STATEMENT OF THE CASE

On March 10, 1968, inmates Haines, Moore, and Doherty were working on the prison detail known as the Inside Yard Gang. Officer Paul T. Duncan was the staff member in charge of this work assignment.[1] (A. 14). While working, Haines, Doherty, and Moore began arguing over which segment of the inmate population would informally control the inmates. Haines stated that Moore was inciting Doherty against him. Several times during the argument, both of the younger inmates made it clear that the "Young Blood" within the penitentiary was taking control and that the "Old Blood (like Haines) was done." (A. 14).

After the initial verbal confrontation, Haines left Moore and Doherty for a brief period to inspect a pile of cinders. On Haines' return to the Yard Gang, he, Moore, and Doherty resumed the argument over who was

---

1. Haines was 65 years old and was approximately 30% disabled due to foot injuries. Inmate Moore and Doherty were near thirty years of age.

going to assume the role as group leader, the "Young Blood" or the "Old Blood." Prisoners Doherty and Moore warned Haines that he had better watch out or he would be hurt. Haines answered the inmates by stating that "they could hop on at any time they felt like it and he had never run once, did not intend to start then." (A. 14-15).

Shortly thereafter, the three prisoners entered a bath room. The argument continued. One of the two younger inmates asked Haines if he wanted to start something. Haines then struck Doherty over the head with a shovel. The ensuing scuffle was broken up by Officer Duncan. (A.15).

Officer Duncan immediately rendered first aid to Doherty. During inmate Doherty's and Officer Duncan's absence, Moore threatened Haines, who responded by informing Moore that he could resume the matter at any time he chose.

Officer Rogers then escorted petitioner to the disciplinary unit to appear before Russell Lence who was the disciplinary officer that day. Before Officer Lence, Haines admitted hitting Doherty with the shovel but refused to further explain his actions. Haines was placed in an isolation cell until a further investigation could be made by Officer Duncan and a report submitted. (A. 15-16).

After completion of the investigation of the fight between Haines, Moore, and Doherty, Officers Lence and Rogers called petitioner before them and read the formal report of Officer Duncan to him. When Haines was given the opportunity to respond to the report, he refused to talk about the incident or the report other than to object to the statement of Duncan that he (Haines) had hit the shovel on the yard gang shack floor. (A. 15-16).

After the disciplinary hearing, Haines was placed in isolated confinement for 15 days, from March 10 to March 25, 1968. He was given three blankets to sleep on. The cell was dark but contained toilet facilities. He received a complete noon meal and two slices of bread every morning and evening. No towel or soap was furnished. (A.16).

On being removed from punitive segregation[2] on March 25, 1968, Haines received notice that the Prison Merit Staff had reduced him to "C" grade, which meant

---

2. Punitive Isolation and Administrative Segregation are not synonymous. According to the American Correctional Association, Manual of Correctional Standards, and under the privailing Illinois practice, punitive segregation consists of seperation from other prisoners, a restricted diet and loss of most privileges. Punitive segregation is not applied on an indefinite or permanent basis and, when punitive segregation involves a restricted diet, it is never continued for more than fifteen days. The cells may not be wholly dark. Toilets and sinks may be provided in the cells but may be omitted from some cells which are used by inmates who persist in destroying such equipment. The cells should be designed to prevent the inmate from creating disturbing noises and communicating with other inmates. The interior of the cells must be fully visible to correctional officers standing outside the cell. This is to insure proper supervision, to prevent mutilitation suicide or damage to equipment in the cell.

Administrative segregation is designed for inmates who have demonstrated their inability to live in peace with the general population or who require protection from other inmates. In essence administrative segregation is a seperate prison within a prison—sometimes housed in its own building and sometimes in a seperate section of a regular prison building. Normal prison privileges are enjoyed by the inmates. Educational, medical, religious

that Haines could not purchase certain items at the prison commissary for a designated period.

On July 1, 1968, Haines filed a complaint based upon these disciplinary proceedings in the United States District Court for the Northern District of Illinois seeking a total of $500,000 damages, a declaratory judgment, and any further relief as justice and equity may require against Otto J. Kerner, Governor of the State of Illinois, Ross V. Randolph, Director of Public Safety (now Department of Corrections); Max P. Frye, then Warden; then Assistant Wardens, Lewis C. Lence and Jeffie Biggs; Officers Paul V. Sympson, Russell Lence, E. Rogers, William Sheets (Commissary), Paul T. Duncan; and Donald Gentsch (Record Clerk). (A. 7).

After granting the petitioner twenty days in which to answer the respondents' motion to dismiss, the District Court dismissed Haines' complaint without a hearing on December 18, 1968. On May 25, 1970, the Court of Appeals affirmed the District Court's dismissal of Haines' complaint stating:

---

and other activities are maintained to the extent practicable in administrative segregation. The primary difference between administrative segregation and the general penitentiary is greater individual attention in segregation and an emphasis on protecting the personal security of the inmate. In particular activities in administrative segregation are conducted on an individual or small group basis. The goal of administrative segregation is to try to bring as many of its inmates as possible to the point where they can safely be brought into the general prison population.

See Manual of Correctional Standards, The American Correctional Association, Ch. 13, pp. 247-248 (3rd ed., 1st printing 1966).

> "State prison officials are vested with wide discretion, and discipline reasonably maintained in state prisons is not subject to our supervisory direction.
>
> * * *
>
> Apart from purely conclusory statements, the allegations of Plaintiff's Complaint do not show that the Defendants acting under color of state law or in conspiracy abridged his Constitutional rights, privileges or immunities within the scope of the Civil Rights statutes on which he relies." *Haines* v. *Kerner,* 427 F. 2d 71, (7th Cir. 1970).

This Court granted Haines' petition for Writ of Certiorari on March 8, 1971.

SUMMARY OF ARGUMENT

While an inmate of the Illinois State Penitentiary at Menard, the petitioner struck another inmate over the head with a shovel following a verbal disagreement. This act was witnessed by a third inmate and admitted by petitioner. Following an investigation by prison officials, the petitioner was shown the investigation report and given an opportunity to make a statement. Haines refused to say anything other than to correct minor factual statements in the report. As discipline for violation of the prison rule against fighting, petitioner was isolated from the general prison population for fifteen days. He now complains that this isolation is cruel and unusual punishment in violation of the eighth amendment to the federal constitution, and further, that he was denied due process of law in the prison disciplinary proceedings. Reference to history and relevant case law clearly establish the invalidity of these complaints.

The historical origins of the eighth amendment prohibiting cruel and unusual punishment reflect that the

provision was intended by the framers of the Constitution to eliminate sanguinary, public punishments which prevailed both in England and the United States during the colonial period of American history. This reaction against sanguinary punishments also resulted in the first prison system in the United States. Although replaced with imprisonment as punishment for a criminal offense, sanguinary punishments persisted as disciplinary measures for enforcement of prison rules until the reformative disciplines of isolation, silence and hard labor were introduced as methods of enforcing prison rules. Thus, the punishment of isolation was a reform mode of prison discipline, replacing the harsher sanguinary punishments once utilized within this country's prisons.

Pertinent case law governing the limits of judicial scrutiny of internal prison discipline has established that the judgment of prison officials concerning matters of internal prison discipline or security is not reviewable absent a showing that punishment imposed for a prison rule infraction is unreasonable, cruel or unusual.

When judged in the light of relevant case law and modern penological recommendations, the factual circumstances of petitioner's confinement in isolation for fifteen days was neither unreasonable nor cruel and unusual. Rather, this action was necessary to the maintenance of proper prison discipline and security.

Petitioner was disciplined only after a complete investigation of the incident by prison officials after the petitioner's initial admission of the infraction. During the investigation, Haines was confronted by the accusation, informed of the evidence against him and afforded a reasonable opportunity to explain his actions. Within the context of administering prison discipline, the requirements of due process have been fully met.

ARGUMENT

I.

THE ALLEGED CONDITIONS OF PETITIONER'S CONFINEMENT IN THE ISOLATION UNIT OF MENARD PENITENTIARY FOR A SERIOUS VIOLATION OF PRISON RULES DOES NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT.

The Petitioner here complains not of punishment he has received for the crime of which he was convicted, but rather of his temporary transfer from the general prison population to a unit isolated from most other prisoners. The transfer resulted from a rather substantial violation of the rules and regulations of the Illinois State Penitentiary.

The resolution of petitioner's complaint requires reference to the exact meaning of "cruel and unusual punishment" as the phrase is used in the eighth amendment to the federal Constitution. Two subjects are relevant to this determination: First, the historical meaning of the phrase at the time of its inclusion in the Constitution; and second, judicial interpretations of the constitutional provision, along with the policy considerations relevant to the application of the prohibition to internal prison disciplinary matters. See *Sostre* v. *McGinnis*, 442 F. 2d 178, 191 (2nd Cir. 1971). Respondents will establish the basic invalidity of petitioner's argument on each of these levels.

A.

Historical Perspective—The Eighth Amendment And Discipline In Prisons.

The question of punishment was easily resolved in the laws of an earlier era. An eye for an eye and a

tooth for a tooth[3] was a relatively clear standard to apply. With the substitution of social punishment for revenge in kind, the question of excessive penalties immediately arose[4] and was articulated in the Magna Carta as the problem of cruel and unusual punishments. While Chapter 14 of the Magna Carta applied on its face only to fines[5] by 1615 it was applied to forms of imprison-

---

3. Exodus 21:25; Leviticus 24:19-21. See also, Aristotle, Ethics 148-149 (1955): T. Dufwa, The Vikings Laws and the Magna Carta 51-52 (1963).

4. Granucci, Nor Cruel and Unusual Punishments Inflicted; The Original Meaning. 57 Cal. L. Rev. 839 (Oct. 1969).

5. "A free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement; (2) and a Merchant likewise, saving to him his Merchandise; (3) and any other's villain than ours shall be likewise amerced, saving his wainage, if he fall into our mercy. (4) And none of the said amerciaments shall be assessed, but by the oath of honest and lawful men of the vicinage. (5) Earls and Barons shall not be amerced but by their Peers, and after the manner of their offense. (6) No man of the Church shall be amerced after the quantity of his spiritual Benefice, but after his laytenement, and after his Laytenement, and after the quantity of his offence." See also: Am. Jur., 2d Desk Book 42, 45 ——; the Magna Carta was initially issued by King John, June 15, 1215 but was annulled by the Pope at the King's request after being law for only nine weeks. However, the document was confirmed with some changes in 9 Hen. III and 25 Edw. I. This text is from the confirmed charter of 25 Edw. I. See Plunkett, A Concise History of the Common Law, 23 (1966).

ment. *Hodges* v. *Humkon,* Reports of Edward Bulstrode, Cases in the Kings Bench. 139-40 (2d ed. 1688).

In the year 1688, during the reign of William and Mary, the phrase "cruel and unusual punishment was drafted into the tenth declaratory clause of the Bill of Rights which reads:

> "The excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[6]

This clause was transcribed verbatim into the Virginia Declaration of Rights of 1776 and 'with little variaion' appears in the Eighth Amendment to the Constitution of the United States.

The exact purpose of the enactment of the cruel and unusual punishment clause of the English Bill of Rights of 1689 is not unequivocal. However, there is substantial historical evidence that the phrase as originally drafted was intended to prohibit only severe punishment unauthorized by statute and not within the jurisdiction of the court to impose rather than to prohibit any specific method of punishment.[7]

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6. 1 W. & M., c2, § 2 (1689); 1 J. Stephen, History of the Criminal Law in England 490 (1883).

7. That the phrase was originally intended to prohibit specific forms of punishment is a popularly held misconception. Compare Granucci, supra at note 5, at 852-60 with I Brant, the Bill of Rights 155 (1965). It is an interesting note that executing male rebels by drawing and quartering continued until 1814. 54 Geo. III, c 146 (1814). Beheading and quartering was not eliminated until 1870. 33 and 34 Vict., c 23, § 31 (1870). The burning of female felons continued in England until 1790, 30 Geo. III, c. 48 (1790). The use of the pillory was not

Whether by new design or misinterpretation,[8] the drafters of the Eighth Amendment clearly directed its prohibition against punishment, then perceived as torturous.[9] The Annals of Congress record the following discussion of the clause:

> "Mr. Smith, of South Carolina, objected to the words 'nor cruel and unusual punishments;' the import of them being too indefinite." Mr. Livermore [of New Hampshire]. The clause seems to express a great deal of humanity, on which account I have no objection to it; but as it seems to have no meaning in it, I do not think it necessary. What is meant by the terms excessive bail? Who are to be the judges? What is understood by excessive fines? It lies with the court to determine. No cruel and unusual punishment is to be inflicted; it is sometimes necessary to hang a man, villains often deserve whipping, and perhaps having their ears cut off; but are we in future prevented from inflicting these punishments because they are cruel? If a more lenient mode of

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abolished until 1837 by 7 Will. IV and 1 Vict., c. 23 (1837). Whipping as a common law penalty for misdemeanors was not abolished for females until 1820, Geo. IV, c. 57 (1820) and generally by the Criminal Justice Act of 1948 11 and 12 Geo., VI, c. 58, § 2 (1948).

8. See 4 Blackstone, Commentaries on the Laws of England Ch. 29, pp. 369-72; G. Keeton, Lord Chancellor Jeffreys and the Stuart Cause (1965). J. Pollack, The Popish Plot (1903); and, 10 Cobbett's Complete Collection of State Trials col. 1325 (Howell ed. 1811).

9. For a discussion of the general severity of the English criminal law during the eighteenth century, see 1 J. Stephen, History of the Criminal Law in England 457-92 (1883); I Radzinowicz, A History of English Criminal Law. 24-25 (1948).

correcting and deterring others from the commission of it could be invented, it would be very prudent in the Legislature to adopt it, but until we have some security that this will be done, we ought not to be restrained from making necessary laws by any declaration of this kind. The question was put on the clause, and it was agreed to by a considerable majority."[10]

The concern with the sanguinary punishments[11] prevalent during the colonial period of American history prompted not only the enactment of the Eighth Amend-

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10. Annals of Congress, Vol. I., pp. 781-82 (Aug. 17, 1789). In the United States, for federal offenses, whipping and standing in the pillory were not abolished until the act of February 28, 1839, c. 36, § 5 (5 St. 322); at which time imprisonment at hard labor was substituted for nearly every other ignominious punishment, not capital.

11. S. Knapp, Life of Thomas Eddy, p. 56 (1836). A noted Quaker philanthropist, Thomas Eddy, living during the period of the beginning of the American independence, wrote of the age:

"The tears of the sympathetic, and the voice of the benevolent, had made but slow progress against the apathy of the great mass of mankind, and the vindictive spirit of a few, who believe, or profess to believe, that the world should be governed by a rod of iron. The hearts of the people were made callous by the sight of stocks, whipping posts, pillories in every shire town or considerable village. Flagellation with the cat-o'-nine tails, burning in the hand or forehead with a hot iron, cropping the ears of prisoners in the pillory, were all common sights to the youngest as well as the oldest portion of the community."

ment, but also resulted in the first organized prison system in this country.[12] Prior to 1786, there were no formal prison systems in the United States. Places for permanent punishment or for reformation were not contemplated by the people since public physical punishment and capital punishment were deemed generally adequate for penal purposes. Prisons prior to the late 1700's were merely local jails used generally for brief pre-trial detention or for short periods of imprisonment.[13]

Initially, imprisonment within the penitentiary was a device of the Quakers to combine effective custody and

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12. Between the years 1682 to 1717, William Penn, attempted, in his Frame of Government to abolish tortures and bloody punishments for criminals and to substitute the penalties of imprisonment at hard labor, floggings, fines, and forfeitures. However, Penn's effort to change the penalty practices of the time were repealed by Queen Anne and the common sanguinary laws were restored in 1719. 1776, however, led to the formation of the first prison society in either America or Europe—the "Philadelphia Society for Assisting Distressed Prisoners." After the Revolution, the society regrouped and called themselves the Philadelphia Society for Alleviating the Misuses of Public Prisoners." During the late 1700's the Society of Friends, in the United States began their efforts to abolish the death penalty, and joined movements to end sanguinary punishments, and generally to improve the conditions of inmates in local jails. By 1790, the work of the prison reform societies had laid sufficient groundwork for the beginning of a formal prison system in the United States.

13. See generally, O. Lewis, The Development of American Prisons and Prison Customs: 1776-1845, pp. 1-24 (1922).

punishment of criminals with humane treatment. Imprisonment during the late 1790's and early 1800's was the reform penologists' answer to public capital and corporal punishment.[14]

In the year 1790, prompted by the Society of Friends, the Pennsylvania Legislature provided that the jail, located at Walnut Street, Philadelphia (which has been constructed in 1773 and used as a pre-trial detention facility) should be remodeled into a new prison institution. The renovated structure should receive two classes of prisoners: those who had been convicted of serious offenses, and those convicted of crimes of lesser severity. The more serious offenders were to be confined in sixteen solitary cells, initally without labor or reading materials for long periods of their sentence, with one meal a day consisting of a coarse pudding of maize and molasses, asquiring only after a specified time the privilege of working and reading in their cells. Persons who had been convicted of crimes that were formerly punishable by death were to spend from one-twentieth to one-half of their term in solitary confinement. The other inmates were to work in shops during the day in association with each other.

"The building that contained [these] 16 solitary or separate cells, which was called the "penitentiary house" after the term introduced into England by John Howard, was of plain brick, and 160 feet by 80 in size. Each cell was 8 feet long, 6 feet wide, and 10 feet high, had two doors, an outer wooden one, and an inside iron door. A passage ran through the middle of the floor, separating the cells, just as in most buildings for the lodging of any considerable number of persons the interior hall

14. Id., at 26.

runs down the center of the floor, with rooms on each side of the corridor. A stove in the corridor was to warm the rooms. Each cell had a large leaden pipe that led to the sewer, and thus formed a very primitive kind of a closet. The window of the cell was secured by blinds and wire, to prevent anything being passed in or out. The convicts in the solitary cells were not to labor; the other convicts worked in shops during the day."[15] In 1839, Doctor Julius, a noted penologist, described this "penitentiary house" as the "cradle of the American system of reformative prison discipline."[16]

The Walnut Street Prison[17] abolished three significant and bothersome evils of the local jails: namely, the

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15. Id., at 26-27.

16. Id., at 27.

17. In 1773, three years before the first American prison society was founded in Philadelphia, John Howard, an English gentleman, began visiting the European prisons in order to ascertain and publicize their disorders in hope of legislative correction. Upon publication of his works in 1777, he became known worldwide as the great authority on prison discipline, construction and reform. If not directly, at least indirectly, he was the guiding spirit of our American prison system in many respects. At a minimum, he was a substantial influence on American penal reform between 1780 and 1800. Caleb Lownes, dominant Quaker figure in the management of the Walnut Street Penitentiary was a close reader of Howard's works and used them as a material guide in establishing the first State prison of Pennsylvania. It is interesting to observe John Howard's suggested modalities of punishment for the violation of prison rules drafted in his "General Heads of Regulations Proposed To Be Established in Penitentiary Houses or Houses of Corrections." "Abridgment of diet—or coarser kind—hard or

commingling of the sexes in large dormitory-like rooms, the use of spiritous liquors, and the indiscriminate confinement of debtors and witnesses with those confined for criminal offenses. This early prison was founded upon the concepts of inmate labor and humane treatment, and for the next forty years, was the model for state penitentiary systems.

While at one time a violation of prison rules often invoked severe corporal punishment,[18] the fifty years of

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disagreeable work—marks of disgrace; wearing collar, Ic—stripes—term lengthened on attemps to escape—shutting up the refractory in strong rooms—solitary confinement and work." J. Howard, The State of the Prisons in England and Wales, Introduction, p. 2, Tables, p. 472 (1777).

18. (a) Punishment in the year 1814 in the Massachusetts State Prison for an assault upon another inmate:

"That he wear an iron collar round his neck for 90 days and a clog on his left leg for 6 months, and that during this whole time he be chained to his workbench; that he sleep in solitary confinement for 6 months, and that during that period he receive only bread and water for his supper; that he be brought into the inner yard on the four succeeding Saturdays, between the hours of three and five in the afternoon, and be placed for one hour on an elevation, and a label on his breast with these words: 'For stabbing two fellow prisoners; that no letter pass to or from him, or that any relative or friend visit him during his confinement, or any convict speak to him; and in case, during the performance of any part of the sentence, he be guilty of any misconduct, such parts of the sentence as have been inflicted be considered as null, and he shall be

prison experience subsequent to the enactment of the Eighth Amendment reflects that the disciplines of silence, solitary confinement, and hard labor were viewed as

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held to suffer the same over again." Lewis, supra note 16, at 72.

(b) Graded system of punishments for the Violation of Prison Rules applied prior to 1835 in the Eastern Penitentiary of Pennsylvania:

"The first and mildest punishment was a deprivation of the use of the exercise yard by the convict for a given period. The second stage of punishment included the forfeiture of a dinner for a period of from two to three weeks—in other words, a serious reduction in rations. For severer cases, the dark cell was employed; this being an ordinary cell from which light was totally excluded. Often even the single blanket was denied the prisoner. Every twenty-four hours the convict receive eight ounces of bread and some water. His sufferings were intense, especially in cold weather. One convict had been held in the dark cell for forty-two days, and was suffering from starvation and delirium when taken out.

The next degree of punishment in an ascending scale was the absolute deprivation of food, for a period of not over three days. A further stage was reached with the infliction of "ducking," in which process the convict was suspended from the yard wall by the wrists, and drenched with buckets of cold water, the degree of severity of which depended upon the state of the atmosphere.

The 'mad or tranquilizing chair' was another instrument of corporal punishment. It was a large box-chair made of planks. The convict was strapped in the chair and his hands were handcuffed. For the feet there was no resting place. It was not possible to move body or limbs, and the consequent pain was intense. Arms and

reformative methods of punishing prison rule infractions. See generally, O. Lewis, The Development of American Prisons and Prison Customs: 1776-1845 (1922).

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legs swelled frightfully. Even while in this position prisoners had been beaten.

The 'straight-jacket,' another punishment, was a sack or bagging cloth of three thicknesses, with pocket-holes in the front for the admission of the hands. In the back there were rows of eyelets, whereby the jacket might be laced up. The jacket was forced over the head of the convict, and his hands were inserted in the pockets; a collar was fitted about the neck, but the head was left free. The jacket was kept upon the prisoner for from four to nine hours. Convicts in the Eastern Penitentiary had been so tightly laced into the jacket that their necks and faces were black with congealed blood. The torture could be made excruciating. One convict was reported to have lost the use of his hand. Men of the stoutest nerve would shriek as if on the rack.

The 'gag' was the severest and most complicated of the punishments. It was under this treatment that an insane convict died, thus precipitating the investigation. The gag resembled the stiff bit of a bridle, having an iron 'palet' or mouthpiece in the center, and chains at each end. It was placed in the mouth of the sufferer, and drawn tightly toward the jaws, the chains being fastened in a lock. The prisoner's hands were placed in leather gloves which had iron staples in them, through which staples leather straps were introduced, and his arms were crossed behind his back. Other straps were passed around his hands, and then passed between the chains of the gag and the back of his neck. Now his hands were forcibly drawn up to his shoulders, and his head drawn back, this tightening the gag in the mouth, and rendering the agony intolerable. The bits and chains, passing with force

Thus, the isolated confinement to which petitioner Haines was subjected was historically conceived as the humane alternative to the corporal punishments existing at the time of the adoption of the Eighth Amendment to the Constitution of the United States. The question that remains is whether present case law and policy considerations dictate that petitioner's confinement was impermissible. Respondents will establish that this confinement was both permissible and required.

B

PUNITIVE SEGREGATION—JUDICIAL SCRUTINY PURSUANT TO THE EIGHTH AMENDMENT

The general rule circumscribing the limits of federal judicial scrutiny of state prison discipline and administration was clearly enunciated by this Court in *Johnson* v. *Avery*, 393 U.S. 483, 486 (1969):

> "There is no doubt that discipline and administration of state detention facilities are state functions. They are subject to federal authority only where paramount federal constitutional or statutory rights supervene. It is clear, however, that in instances where state regulations applicable to inmates of prison facilities conflict with such rights, the regulations may be invalidated."

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against the veins and arteries, necessarily produced a suffusion of blood to the head, and the sufferer, if not speedily relieved, was in great danger of death."

After a legislative investigation, the gag was held to be neither cruel nor unusual. Id, at 221-224.

The specific guidelines for this case, in which the only objection is to the manner of imposing punishment for the violation of a valid prison rule that prohibits fighting between inmates,[19] are found in *Roberts* v. *Pegelow*, 313 F. 2d 548, 550-551 (4th Cir. 1963):

> "So long as the punishment imposed for an infraction of the rules is not so unreasonable as to be characterized as vindictive, cruel or inhuman, there is no right of judicial review of it. If a judge thought that the particular infraction of the rule . . . [should have been punished less severely], his judgment is not to be substituted for that of the prison officials who are responsible for the management of the prison population."

Apparently, there are four ways in which punishment for a particular offense may be unconstitutionally cruel

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19. Rules and Instructions for the Inmate, Illinois State Penitentiary, Menard Branch, p. 25.

Section: General.

Rule 3.

"Fighting, scuffling or violence in any form is strictly forbidden."

Rule 4.

Any inmate participating either actively or passively in a mutiny, riot or insurrection, destruction of State property, attack upon the person of any civilian or employee or inmate will be dealt with very severely, by being deprived of all Statutory Good Time and special disciplinary action and loss of privileges as is warranted and deemed advisable, and prosecution by the Courts of that county in which the institution is located, to the fullest extent of the law.

and unusual. First, if the *kind or type* of punishment imposed, per se, is unnecessarily cruel, it is prohibited. *Trop* v. *Dulles*, 356 U.S. 86, 99 (1958). Second, if the penalty is *greatly disproportionate* to the offense for which it is imposed, it is prohibited. *Weems* v. *United States*, 217 U.S. 349, 368 (1910). Third, if the *means or implementation of a permissible kind of punishment is unnecessarily painful or unreasonably severe*, it is prohibited. *Louisiana ex rel. Francis* v. *Resweber*, 329 U.S. 459, 464 (1967), *Wilkenson* v. *Utah*, 99 U.S. 130 135 (1878). And fourth, in some situations the mere *fact* of punishment is prohibited. *Robinson* v. *California*, 370 U.S. 660 (1962).

Petitioner, in his pro se Civil Rights Complaint, alleged that the following incidents of his 15 day confinement in punitive segregation for his act of striking another inmate over the head with a shovel taken together constituted impermissibly cruel punishment: 1. the cell was dark; 2. he had to sleep on a concrete floor with three blankets; 3. he had a toilet; 4. he received a regular noon meal plus two slices of bread in the morning and evening every day; 5. no articles of hygiene were furnished him including towel or soap; 6. his false teeth became so rancid that he had to remove them; and 7. he was 65 years old and 30% disabled due to a foot injury.[20]

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20. Although pro se prisoner complaints should be liberally construed, this doctrine does not permit, nor should it, facts to be inferred by the court that may or may not state a cause of action that have not been explicitly set forth. Liberal construction simply means that if an inmate pleads sufficient facts which clearly merit some judicial relief, he ought not to fail entirely because

"The law is clear that imposition of punitive segregation (or solitary confinement) for the violation of prison rules is not, per se, prohibited punishment. *Ford* v. *Board of Managers of New Jersey State Prison,* 407 F. 2d 937, 940 (3rd Cir. 1969); *Krist* v. *Smith,* 309 F. Supp. 497, 499 (S.D. Ga. 1970) affd. 439 F. 2d 146 (5th Cir. 1971); *United States ex rel. Knight* v. *Ragen,* 337 F. 2d 425, 426 (7th Cir. 1964); *Burns* v. *Swenson,* 430 F. 2d 771 778 (8th Cir. 1970); *Graham* v. *Willingham,* 384 F. 2d 367, 368 (10th Cir. 1967). Therefore, this type of punishment and the fact of its imposition are not in issue. The issues that remain, however are twofold: (1) was the prison penalty disproportion to the offense; and/or (2) was the

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he misconceives the nature of the pleadings or mislabels his petition. See: Darr v. Burford, 339 U.S. 200, 203-204 (1950); United States v. Morgan, 346 U.S. 502, 505 (1954); Roberts v. Pegelow, supra, at 549-50; Hancock v. Pate, 223 F. Supp. 202, 203 (N.D. Ill. 1963). Although the general rule is that "a complaint should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief;" Conley v. Gibson, 355 U.S. 41, 45-46 (1957), the specific rule for handling pro se prisoner's complaints in forma pauperis is set out in Carey v. Settle, 351 F. 2d 483, 484-85 (8th Cir. 1965):

> "Prisoners will not lightly be permitted to use 28 U.S.C.A. § 1915(a) to institute suits for damages or injunction against the officials in whose custody they have been placed for confinement.—Such actions are too frequently mere outlets for general discontent in having to undergo penal restraint or of personal satisfaction in attempting to harass prison officials. A court therefore should be satisfied that there exists substantiality as to such a claim, of justiciable basis and of impressing reality before it permits a prisoner to maintain an action therefor on in forma pauperis privilege."

implementation of the penalty unreasonable? A general test would appear to be whether, under all the circumstances cognizable to a court, the present punishment shocks the general conscience or is barbarous when judged in the light of concepts of elemental decency. *Weems* v. *United States*, supra, 217 U.S. at 378; *Robinson* v. *California*, supra, 370 U.S. at 676 (concurring opinion of Mr. Justice Douglas.) It should be noted, however, that within the present context, views held by some present day penologists are not the minimum constitutional standard, and the resultant alleged restrictions of this petitioner's confinement should be reviewed in the light of the requirements of the particular custody and discipline.[21] *Burns* v. *Swenson*, 288 F. Supp. 4, 8 (W.D. Md. 1968) aff'd. 430 F. 2d 771 (8th Cir. 1970). Both

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21. "It must be recognized also that the administration of prison discipline must in many instances be summary, and that the punishment administered to a convict for a violation of prison rules may differ quantitatively and qualitatively from the punishment prescribed by a criminal statute and imposed initially by a court following an individual's conviction of a crime." Tally v. Stephens, 247 F. Supp. 683, 686 (E.D. Ark. 1965. Note also the balancing of the security of the prison with fairness to the individual confirmed in Graham v. Willingham, 384 F. 2d 367 (10th Cir. 1967), Gittlemackfier v. Prasse, 428 F. 2d 1, 4 (3rd Cir. 1970); Knuckles v. Prasse, 302 F. Supp. 1036 (E.D. Pa. 1969) affd. 435 F. 2d 1255 (3rd Cir. 1971).

22. A—Confinement Determined Not Cruel:

(1.)Landman v. Peyton, 370 F. 2d 135 (4th Cir. 1966)

a) in segregation:
   1) not permitted to work or earn money
   2) received only two meals a day

case law[22] and the cognizable circumstances surrounding this case dictate that petitioner's confinement for fifteen

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3) deprived of radio, television and movie privileges
4) did not have access to the library or educational classes
5) one bath once every week

b) in isolation or punitive segregation:
1) no writing or visiting privileges, except in emergencies
2) the diet consisted of bread and water for two days and two regular "C" building meals on the third day
3) combs, toothbrushes, razors and most other personal items were withheld
4) bedding consisted of a mattress with one or two blankets
5) the clothing provided included a pair of pants, a shirt and a pair of socks

c) confinement in solitary lasted up to 25 days for one continual period
d) tear-gas was used on disruptive inmates in isolation and segregation

(2.) Novak v. Beto, 320 F. Supp. 1206 (S.D. Tex. 1970)

a) cell was furnished with:
1) combination toilet-wash basis
2) *drinking fountain*
3) steel bunk without mattress

b) cell was completely dark
c) generally, one inmate to a cell
d) cell was clean
e) inmate was provided with:
1) cloth gown
2) blanket
3) toothbrush & toothpaste

f) inmate left cell only every other day to take a shower
g) diet:

days in isolation under the conditions as alleged was not unconstitutionally cruel or unusual.

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1) bread and water daily
2) one regular meal every 72 hours

h) maximum confinement was 15 days but the same period may be repeated indefinitely after a two-day break

(3.) Ford v. Board of Managers of New Jersey State Prison, 407 F. 2d 937 (3rd Cir. 1969)

a) solitary confinement from August 26-August 31, 1967
b) no wash bowls or running water
c) unable to wash before eating
d) no showers
e) cell was not cleaned
f) pervasive stench
g) bedding consisted of an old matteress covered with a clean sheet
h) diet consisted of 4 slices of bread plus one pint of water 3 times a day with one full meal every third day

(4.) Carothers v. Follette, 314 F. Supp. 1014, (S.D. N.Y. 1970)

a) inmate in segregation for 4½ months
b) not allowed to work
c) not allowed to participate in the educational programs
d) not allowed to attend religious services
e) not allowed to receive newspapers or magazines
f) commissary privileges restricted
g) no visits for 30 days
h) correspondence privileges limited
i) not permitted a radio, or to watch television or attend movies
j) permitted one hour of recreation per day
k) mus be strip searched before going to the yard
l) not permitted to smoke for 30 days
m) put on a restricted diet

The American Correctional Association acknowledges that prisons should be a place for constructive training,

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n) no sheets for 30 days
o) no hot water
p) permitted one shower per week
q) not permitted to have a hairbrush
r) kept naked for several hours
s) not given a toothbrush or toothpaste for 2-3 days
t) not given a blanket for 5 days

(5.) Sostre v. McGinnis, 442 F. 2d 178 (2nd Cir. 1971)
a) confined for 12 months and 8 days
b) segregated with other inmates
c) reduced diet of 2800-3300 calories per day
d) inmate refused an hour of exercise a day due to the requirement of a strip search
e) shave and shower once a week
f) cell was 6'8'' which included:
1) toilet
2) face bowl
3) running cold water
4) soap and a towel
g) light adequate for reading
h) limited reading materials

(6.) Konigsberg v. Ciccone, 285 F. Supp. 585, (W.D. Mo. 1968)
a) detained nude in a completely barren cell except for a toilet hole for 3½ hours
b) physically handled when he refused to obey the prison rules
c) subjected to an anal inspection

(7.) Gurczynski v. Yeager, 339 F. 2d 884 (3rd Cir. 1964) (placement of an inmate in isolation on a restricted diet not impermissible)

(8.) Rhinehart v. Rhay, 314 F. Supp. 81, (W.D. Wash. 1970)
a) 37 days in solitary confinement
b) confined in complete darkness except during meal time

treatment, and education, but it explicitly recognizes, in addition, that custody, discipline and security are the

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c) no allegations concerning improper bedding, food or temperature

(9.) United States ex rel. Pope v. Hendricks, 326 F. Supp. 699, (E.D. Pa. 1971)

a) keeping a light on for 24 hours not cruel

b) temporary inconveniences of solitary including the food and room temperature not cruel

Accord, United States ex rel. Keen v. Mazurkiewicz, 306 F. Supp. 483, (E.D. Pa. 1969)

(10.) Graham v. Willingham, 384 F. 2d 367 (10th Cir. 1967) (continuous and segregated confinement for more than 2 years in a maximum security unit within the penitentiary not cruel considering inmates involvement in three violent incidents)

(11.) See also, Ruack v. Schoaley, 211 F. Supp. 921 (D. Col. 1962); Blythe v. Ellis, 194 F. Supp. 139 (S.D. Tex. 1961); Roberts v. Pepersack, 256 F. Supp. 415 (D. Md. 1966); Ex Parte Pickens, 101 F. Supp. 285 (Terr. of Alaska, 3rd Div. 1951)

B. Confinement Determined To Be Cruel:

1. Wright v. McMann, 387 F. 2d 519 (2nd Cir. 1967)

a. cell was filthy and unsanitary—stank from human wastes

b. cell not adequately heated

c. toilet and sink were encrusted with human excrement

d. confined entirely nude for 11 days

e. denied the use of soap, towel, toilet paper, toothbrush, comb, and other hygiene tools

f. forced to stand at attention between 7:30 a.m.-10:00 p.m. before appearing officer

g. not permitted to sleep between 7:30 a.m.-10:00 a.m.

h. exposed to bitter cold while nude

i. cell was barren

j. had to sleep nude on the barren cold concrete floor

first duties of correctional personnel and must take precedence over all other functions.[23] A positive pro-

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k. had to eat without the semblance of cleanliness
l. confined for 33 days

2. Knuckles v. Prasse, 302 F. Supp. 1036 (E.D. Pa. 1969) aff'd. 435 F. 2d 1255 (3rd Cir. 1971)
   a. isolated for 2½ days in maximum security cells —6'9'11"
   b. confined in cramped quarters two to a cell
   c. cell contained no windows or artificial lights
   d. cell contained a single steel bed
   e. denied adequate exercise (1 hour per day)
   f. repeatedly subjected to strip searches
   g. placed nude in the cell
   h. given two blankets
   i. cells were damp and foul due to a malfunctioning toilet
   j. inmates were without toilet articles including soap, towel, or tissue paper
   k. cells were damp and chilly
   l. were on reduced diets
3. Hancock v. Avery, 301 F. Supp. 786 (M.D. Tenn. 1969)
   a. confined in a concrete cell approximately 5'-8'
   b. cell was unlighted
   c. cell was unproperly ventilated
   d. cell was completely barren except for a hole to receive bodily waste which was flushed from the outside
   e. cell was without water
   f. cell was foul smelling
   g. inmate was denied the use of soap, towel, toilet tissue and other hygienic materials
   h. daily diet consisted of one piece of bread for breakfast and dinner and a regular noon meal
   i. required to sleep completely nude on a concrete floor without blankets
   j. confined 15 days

gram of disciplinary control, including punishment for the purpose of correction and training, maintains the

4. Holt v. Sarver, 300 F. Supp. 825 (E.D. Ark. 1969)
   a. cells were approximately 8'-10'
   b. there were no windows
   c. cells were barren except for a concrete toilet and a drinking fountain
   d. toilets could not be flushed from the inside
   e. cells were dirty and unsanitary
   f. cells were permeated by noxious ordors
   g. plain cotton mattresses provided for bedding were uncovered and dirty
   h. cells were overcrowded (average four men to a cell)
   i. inmates who remained 24 hours in their cells generally did not receive the same mattress back
   j. inmates with infectious disease were housed in same block
   k. no exercise
5. Holt v. Sarver, 309 F. Supp. 362 (E. D. Ark. 1970) aff'd 442 F. 2d 304 (8th Cir. 1971)
   a. general confinement at Cummins and Tucker Farm constituted cruel punishment due to:
      1) trusty system ran the prison and possessed the power of life and death
      2) barracks system:
         a) failed to adequately protect the inmate from bodily harm
         b) led to discrimination
         c) permitted the use of beer and whiskey
      3) isolation cells were unsanitary, overcrowded, and indiscriminately used
      4) prisons lacked a rehabilatative program
6. Jordan v. Fitzharris, 257 F. Supp. 674 (N. D. Calif. 1966)
   a. cell was approximately 6 -8'4''
   b. cell was barren except for a concrete toilet that was flushed from the outside only at 8:30 a.m. and 9:00 p.m.

necessary order for the proper functioning of the rehabilitative programs. See also Sostre v. McGinnes, 442

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c. cell was never cleaned
d. inmate vomited and this was not cleaned
e. floor and walls of the cells were covered with human waste
f. no means to clean his hands or face
g. completely nude for the first 8 days
h. cell was not heated
i. required to sleep nude on a coarse canvas mat
j. cell had no adequate ventilation
k. cell was deprived of light
l. inmate was denied medical care
m. inmate was denied the use of water, soap, towel, toothbrush.
n. confined 12 days
o. inmate had only 2 cups of drinking water per day

7. Sinclair v. Henderson, 435 F. 2d 125 (5th Cir. 1970) (allegations of petition from Death Row Inmates meriting a hearing)
   a. must live and eat in a cell in which the toilet constantly "bubbles over"
   b. must drink water "loaded with rust"
   c. came in contact with excessive bacteria
   d. fed from a food cart that was filthy and infested with insects and human hairs
   e. food trays were stained with grease
   f. fed from bread boxes containing roach nest
   g. only permitted out of the cell 15 minutes daily to wash and exercise
   h. denied sunshine and exercise
8. Jackson v. Bishop, 404 F. 2d 571 (8th Cir. 1968) (beating inmates with a strap for discipline cruel)
9. Dearman v. Woodson, 429 F. 2d 1288 (10th Cir. 1970) (being denied food for 50½ hours stated a cause of action as cruel punishment)
10. Jones v Wittenberg, 323 F. Supp. 93 (N.D. Ohio 1971) (general state of confinement at Lucas County Jail)

F. 2d 178, 190, n.11 (2nd Cir. 1971) (on validity of compulsory corrective training). In most situations, good con-

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a. inmates confined in cramped quarters
b. quarters were lightless and airless
c. cells were damp and filthy due to leaking toilets (waste spilled onto the floors)
d. inmates were subjected to slow starvation
e. no exercise or recreation
f. little if any medical attention
g. punishment was by confinement in strip cells which:
    1) had no furnishings
    2) had no sanitary facilities of any kind
    3) some were unlighted
    4) unheated
    5) inmates were confined nude
    6) sometimes the cells were overcrowded

11. Krist v. Smith 309 F. Supp. 497 (S.D. Ga. 1970) aff'd 439 F. 2d 146 (5th Cir. 1971) (prolonged administration segregation in a maximum security unit of a penitentiary without any exercise "may well" be cruel)
12. Courtney v. Bishop, 409 F. 2d 1185 (8th Cir. 1969)
    a. arbitrarily placed in solitary
    b. deprived of adequate and sanitary food
    c. deprived of adequate medical and psychiatric treatment
    d. subjected to beatings by prison officials
13. Anderson v. Nosser, 438 F. 2d 183 (5th Cir. 1971) (pre-conviction confinement of civil rights demonstrators)
    a. all male prisoners were stripped nude
    b. all women prisoners had to remove shoes, stockings, sweaters, coats, jewelry, and wigs
    c. all prisoners were forced to consume laxatives
    d. eight persons to a cell
    e. cells contained two steel bunks without mattresses or other bedding, a toilet without a seat, and a washbasin

trol of discipline and securit is maintained by the principle of certainty—that is, certainty that misbe-

f. there were no towels or soap
g. there was not adequate toilet tissues
h. temperature of the cells was between 60-70 and aggravated by exhaust fans
i. several prisoners were kicked, pushed, cursed, and generally abused by the highway patrolman in the courtyard
k. deprived of medicine and sanitary napkins

14. Lollis v. New York State Department of Social Services, 322 F. Supp. 473 (S.D.N.Y. 1970) (confinement of 14 year old girl in a New York State Training School under a civil commitment in a stripped room only in night clothes with no recreational facilities or reading material was cruel)
15. Cunningham v. Wingo, —— F. 2d —— No. 20465, (6th Cir. 5-28-71) (depriving inmate awaiting trial of all food for four days and only a small bowl of food every third day for two weeks was inhuman)

C. Common Denomination of Prison Conditions that Constitute Cruel punishment—None of which were present in petitioner's complaint:

1. prolonged nudity
2. overcrowding
3. unjustified physical beatings
4. inadequate food or water
5. absence of adequate ventilation or heat
6. absence of medical care
7. unsanitary living conditions
8. excessive length of confinement in light of conditions

23. Accord, Anderson v. Nosser, 438 F. 2d 183, 190 (5th Cir. 1971); Holt v. Sarver, 309 F. Supp. 362, 379 (E.D. Ark. 1970) aff'd. 442 F. 2d 304 (8th Cir. 1971) See also, C. Greeland, "The Three Special Hospitals in England and Patients with Dangerous, Violent or Criminal Propensities," Medicine, Science, and the Law, Vol.

havior will not go unnoticed and that appropriate steps will be taken to correct it. Under the title of "Accepted Disciplinary Practices," the Association lists the use of punitive segregation (or isolation) as a type of disciplinary measure which may be used constructively in the control of prisoners' behavior, especially, when the safety of others or the serious nature of the offense makes it necessary.[24]

The Association recognizes that confinement in isolation may be on a restricted diet with total loss of inmate privileges, although not recommended for more than 15 days. The diet need only be adequate; it may be monotonous and supply only 2,500 calories per day due to the type of confinement. Generally, the cells should be

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10: 93-103 (April, 1970); S. Holleck, "American Psychiatry and the Criminal—A Historical Review," 6 Int. J. Psych., 185-208 (Sept. 1968), S. Shad, "Crime and Mental Illness; Some Problems in Defining and Labeling Deviant Behavior," 53 Mental Hygiene, 21-33 (June 1969); E. Schur, 3 Law and Society, pp. 113, 154-55 (1968); A Heijder, "The Function of Prison: A Study in Administrative Penology," 56 Int. J. of Offender Therapy, (1967); G. Hawkins, "Deterrence; The Problematic Postulate," 2 Aust & N.Z.J. of Crim., 132-148 (1969);

24. Accord, Krist v. Smith, 309 F. Supp. 497, 500 (S.D. Ga. 1970): aff'd. 439 F. 2d 146 (5th Cir. 1971); Kostal v. Tinsley, 337 F. 2d 845 (10th Cir. 1964); United States ex rel. Keen v. Mazurkiewicz, 306 F. Supp. 483, 485 (E.D. Pa. 1969). Note the use of maximum security cells in other jurisdictions: Respondent's Appendix, United States Federal Penitentiaries (Atlanta, Georgia; Terre Haute, Indiana; Leavenworth, Kansas), Texas, and Ohio.

equipped with a washbasin and toilet seat. However, the Association recognizes that it may be necessary to omit the latter equipment because certain inmates will persist in misusing and abusing the plumbing facilities.[25] The cells should be adequately and evenly heated, well ventilated, and not completely dark. Acceptable sanitary conditions should be maintained.[26]

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25. Judge Henley, in Holt v. Sarver, 309 F. Supp supra note 28, at 378, graphically describes the occasional bizarre behavior that prison officials must anticipate from certain inmates placed in isolation:

> "The isolation inmates who are in protective custody are some of the most incorrigible and dangerous prisoners in the Penitentiary. They are sociopathics with no constructive motivation whatever. They damage and destroy fixtures in the cells to the extent of their ability to do so; they set fire to their bedding and to their clothing. They take no interest in the conditions of the cells except to complain about them. They refuse to obey at times the lawful orders of free world people, and obedience has to be compelled by force exerted by free world people and trusty guards; the inmates resist violently and then complain about their ill treatment."

See also, Respondents' Appendix, Illinois, Menard Penitentiary, First through the Fourth photographs.

26. Manual of Correction Standards issued by the American Correctional Association, Ch. 13, pp. 231-57 (1966); See also the report by the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, The Standard Minimum Rules For The Treatment of Prisoners In the Light of Recent Developments In the Correctional Field; pp. 44-45 (working paper prepared by the Secretariat), indicating that four countries still employ corporal punishment of inmates, three countries still use completely dark cells for punish-

When the total circumstances of Haines' situation are viewed as a whole, even the Manual of Correctional Standards, on a fair resolution, dictates that petitioner's confinement as alleged was a reasonable exercise of state penal discretion. Cf., Sharp v. Sigler, 408 F. 2d 966, 971 (8th Cir. 1969).[27] The prison officials at Menard were confronted with the following factors. In 1968, the Menard Penitentiary housed approximately 1200 inmates of heterogeneous criminal, social, and psychological character. On March 10, 1968, a fight occurred between two inmates—one 65 years old and the other 30. Neither the fight nor the age difference between the combatants was an unusual occurrence for the penitentiary. Although 65 years old and partially disabled due to a foot injury, inmate Haines admittedly possessed sufficient strength and dexterity to hit another inmate over the head with a shovel during a verbal disagreement with enough force to cut the recipient's head, necessitating first aid.[28] At no time, either during the prison investigation of the fight or in Haines' petition, does petitioner claim poor health. He was working in the Inside Yard Gang with pick and shovel.

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ment, and several countries still utilize irons to restrain prisoners.

27. The Court in Sharp concluded that when a prison measure is being challenged as unconstitutional, the test is one of reasonableness as cast in the light of the measure taken (reasons for and purposes intended), the security risks involved, and the alternative procedures available.

28. The concept of self-defense, within this context, is neither relevant nor supported by petitioner's allegations. Within a penitentiary, striking another inmate even in response to a verbal threat merits quick and severe discipline.

In view of the aforementioned, what reasonable prison discipline should have been imposed? The revocation of good time was not a viable alternative since Haines was sentenced to a flat life sentence as an habitual burglar. In deference to the suggestion by the American Correctional Association that good control of inmates within a penitentiary is maintained by the application of accepted discipline in an even-handed and certain manner, the prison authorities were left with few acceptable alternatives other than punitive segregation. Not to have punished Haines severely for a serious breach of prison rules would only have weakened the general principle of swift, consistent discipline (i. e., using punishment to effect correction and training for Haines as well as to reinforce its deterrent and directive symbolism to the rest of the inmate population). The 15 days on a restricted diet as alleged were normal incidents of this type of punishment and well within constitutional bounds Haines may well have not been provided with a traditionally framed bed, towel, or soap since the materials in a bed can be ripped apart and either burned, used to jam the plumbing, or fashioned into a weapon. The wrapping of a bar of soap in a towel produces a useful and efficient blackjack; the towel may be fashioned into a garrote. Haines himself could have ripped apart the bedding or attacked a prison guard with a sharpened toothbrush,[29] metal bar, chain, black jack, or other self-

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29. See Respondent's Appendix, Illinois Stateville Penitentiary. Second and Third Photographs; and Menard Penitentiary, Second and Fourth Photographs. Note report in the Chicago Sun-Times, Mon., August 23, 1971, p. 5 concerning murders committed during an attemped prison break in San Quentin Prison—"The other victims found in the adjustment center were apparently slashed to death with two razor blades; one of them mounted on a toothbrush handle."

made weapon fashioned ingeniously from common social articles. Prison officials must take precautions against such conduct and must, due to the limitations of personnel, time and facilities standardize their facilities in regard to achieve this purpose.

Haines did have a toilet and washbasin with running water at his constant disposal.[30] If in fact, Haines' false teeth did become rancid during his isolation confinement, it was the result of his own inaction. The wash basin with running water was available for his use. Three blankets were provided for bedding. At no time did Haines allege the absence of adequate heat, ventilation, exercise, proper medical treatment, or satisfactory sanitation. He did allege that his cell was dark, but not completely without light. The foregoing clearly reveals that Haines was provided with adequate water, food, and basic sanitation—the essentials of survival."[31] See Jordon v. Fitzharris, 257 F. Supp. 674, 682-83 (N.D. Calif. 1966).

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30. The toilet—wash basin—fountain unit shown in the Appendix to Respondent's Brief, Illinois, Menard Penitentiary, Third Photograph was installed as one unit in 1968 before Haines' confinement. The mattress pictured was not installed until 1970. No where in petitioner's complaint does he state that he was without running water, and he admits the presence of a toilet.

31. "We claim too much of our prisons, on whichever system established. We too often judge convicts by false standards. We promise, through all reformed prison systems, too much, even under the most favorable modes of administering them. It is not easy to correct a trivial, inconvenient habit, for a short time indulged; shall a whole life of wrong and mistake be amended by a few years of imprisonment?"

II

PETITIONER WAS AFFORDED DUE PROCESS OF LAW IN HIS PRISON DISCIPLINARY PROCEEDINGS.

> "As a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of procedures. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account. Hannah v. Larche, 363 U.S. 420, 442 (1960).

The following relevant allegations were presented by the petitioner to the District Court. On March 10, 1968, Haines "engaged in an argument" with inmates Moore

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Remarks on Prison and Prison Discipline in the United States; Dorothea Dix, p. 67 (1845).

See also Gerber & McAnany, "Punishment: Current Survey of Philosophy and Law" 11 St. Louis Univ. L.J. 491 (1967) containing a description of competing penological concepts and establishing that none has gained general acceptance.

The comments of Ms. Dix and Profs. Gerber and McAnany show clearly the reason why both state and federal courts have refused to recognize a particular penological theory and practice as the one true way and to judge all prison administration by the standards of that theory. It is both wise law and hornbook law that declares that "it is not the function of the courts to superintend the treatment and discipline of prisoners in penitentiaries". Stroud v. Swope, 187 F. 2d 850, 851-52 (9th Cir. 1951); Courtney v. Bishop, 409 F. 2d 1185, 1187 (8th Cir. 1969) cert. denied 396 U.S. 915 (1969).

and Doherty. Haines was approached by the aforementioned two inmates "in a threatening manner" and Haines was asked by one of the two men "if he wanted to start something." Petitioner, not certain, but "thinking it was Doherty" who put the challenging question to him, hit Doherty on the head with (a) shovel". Another inmate, by the name of Orlando, witnessed the scuffle. Officer Duncan, who was in his office some fifteen feet away, came to the scene and broke up the fighting. Subsequently, Officer Rogers "walked" petitioner before Officer Lence, who was the disciplinary officer of the day. Haines said that he struck Doherty over the head with a shovel but refused to explain why. Pending an investigation of the incident, Haines was confined in an isolation cell. When the investigation had been completed and a formal report submitted, Haines was called before Rogers and Lence, again, and read the report written by Officer Duncan. Haines objeced to the written statement of Duncan that Haines had hit the shovel on the Yard Gang Shack floor "and refused to discuss (the) statement of Duncan that he engaged with the other two men." When Haines was provided the opportunity to explain the incident or the reasons for his actions, petitioner "refused to talk to these officers." Haines was confined for 15 days in isolation and was limited in the exercise of his commissary rights for hitting another inmate over the head with a shovel.

By petitioner's own representations, the following is clear: (1) after a verbal confrontation with several other inmates, Haines hit another inmate over the head with a shovel and admitted the same to a prison guard who came to investigate the disturbance; (2) in response to Haines' volunteered statement and the circumstances con-

fronting the prison officials, an investigation was conducted of the incident and a formal report submitted to a committee of two officers not originally involved in the inmate confrontation. Subsequently, with Haines well aware of the charge against him, petitioner was called before the two disciplinary officers and was presented with the investigatory findings of fact. Haines was then given a chance to either rebut the findings or in some way explain his action; petitioner refused to answer other than to object to the statement in the report that he had struck the Yard Gang Shack floor with a shovel.

From the foregoing, it is explicit that the decision of the prison officials to confine Haines for 15 days in isolation and to withdraw certain commissary rights under the circumstances was a reasonable exercise of state penal discretion premised on facts rationally determined. Petitioner was confronted with the accusation, informed of the evidence against him and afforded a reasonable opportunity to explain his actions. Within the prison disciplinary context, due process requires no more.[32]

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32. A. Intra-Prison Discipline and Due Process:
(1.) When federal courts are reviewing state or federal prison disciplinary proceedings, to pass constitutional due process muster, all that is required is a clear showing that the punishment was not imposed arbitrarily or capriciously—the record need only reveal a considered judgment.
Burns v. Swenson, 430 F. 2d 771, 778-81 (8th Cir. 1970)
Graham v. Willingham, 384 F. 2d 367, 368 (10th Cir. 1967)
Theriault v. Blackwell, 437 F. 2d 76, 77 (5th Cir. 1971)

However, counsel for petitioner argues that the foregoing procedures only appear to be fair; but, are not,

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(2.) Sullivan v. Ciccone, 311 F. Supp. 456, 458 (W. D. Mo. 1970)
Admitting the violation of a prison rule negates the requirement of a hearing.

(3.) Sostre v. McGinnis, 442 F. 2d 178, 194-199 (2nd Cir. 1971)
Before substantial deprivations of prison freedoms are to be visited upon a prisoner, the action should be premised on facts rationally determined. In most cases, an inquiry should be held necessitating:
(a) confronting the inmate with the accusation;
(b) confronting the inmate with the evidence against him;
(c) affording the inmate a reasonable opportunity to explain his actions.

(4.) Bundy v. Cannon, —— F. Supp. —— Nos. 70-486 T and 70-1363 T (D.C. Md. 5-26-71)
Before placing an inmate in isolation or reducing good time, due process requires:
(a) adequate notice of misconduct;
(b) impartial decision maker;
(c) confrontation of the accused with his accuser;
(d) opportunity for the accused to question the accuser and present his own witnesses.

(5.) Bershir v. Swenson, —— F. Supp. —— Nos. 1465, 1496, 1541 (W.D. Mo. 6-28-71)
The following disciplinary procedure for a serious rule infraction complied with due process:
(a) inmate advised of the nature of the charge;
(b) inmate appears before an Adjustment Board of three prison officials;
(c) inmate given an opportunity to make any statement;
(d) Board renders its decision.

since Haines was prevented from presenting any meaningful reply because either;

(6.) Carter v. McGinnis, 320 F. Supp. 1092 (W.D. N.Y. 1970)
Before inmate could be lawfully confined in a segregation unit for disciplinary infractions, prison officials were required to present evidence in a hearing with the inmate present.

(7.) Tyree v. Fitzpatrick, 325 F. Supp. 554, 558 (D. Mass. 1971)
The following procedure used by prison officials before placing the inmate in segregation provided at least some assurance of elemental fairness:
(a) inmate given notice of the charge;
(b) inmate was brought before a prison official for a hearing;
(c) inmate was given an opportunity to explain away the charges.

(8.) Meola v. Fitzpatrick, 322 F. Supp. 878, 886 (D. Mass. 1970)
Before the inmate could be substantially punished, elemental procedural due process required:
(a) notice of the charge;
(b) opportunity to reply to them.

(9.) Dabney v. Cunningham, 317 F. Supp. 57, 61 (E.D. Va. 1970)
Placement of inmate in a "padlocked cell" was arbitrary and without reasonable justification since the prison officials had not explained to the inmate why he was locked-up nor did the prison justify his punishment to the court.

(10.) Nolan v. Scafati, 306 F. Supp. 1, 3 (D. Mass. 1969) (Wyzanski, J.) rev. on other grounds; 430 F. 2d 548 (1st Cir. 1970);
Kritsky v. McGinnis, 313 F. Supp. 1247, 1250-51 (N.D. N.Y. 1970)

1. He thought that any statement he made during the the disciplinary hearing could be used against him in a future criminal prosecution for the same act (Pet.'s Brief, p. 20); or,

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Before a prison official imposes a serious penalty upon an inmate, he must:
(a) advise the inmate of the charge;
(b) confront the inmate with the evidence;
(c) provide the inmate with an opportunity to be heard in his own behalf;
(d) reach his decision on substantial evidence.

(11.) Carothers v. Follette, 314 F. Supp. 1014, 1028 (S.D. N.Y. 1970)
Before imposing a serious punishment on an inmate for a prison rule violation, essential elements of fundamental procedural due process requires:
(a) advance notice of the charge;
(b) opportunity to present evidence;
(c) appearance before a relatively objective tribunal.

(12.) Lake, et al. v. Lee, et al. —— F. Supp. —— Nos. 5532-69, 5563-69, 5582-69, 5650-59, 5796-69 (S.D. Ala. 6-30-71)
Before an inmate can be placed in isolation, segregation, or have his good time removed, there must be:
(a) a hearing;
(b) written notice of the charge;
(c) opportunity for the inmate to speak on his own behalf;
(d) inmate must be confronted with the evidence against him.

(13.) Valvano v. McGrath, —— F. Supp. —— No. 70-C-1390 (E.D. N.Y. 5-24-71)
Before imposing punitive segregation upon an inmate, the prison must:

2. He was prevented from presenting a complete reply since he was not made aware that any statement he made during the disciplinary hearing could not

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(a) provide the inmate with notice of the charge;
(b) confront the inmate with the evidence;
(c) provide the inmate with an opportunity to explain his actions
(d) investigate the validity of his explaination

(14.) United States ex. rel Gallagher v. Daggett, 326 F. Supp. 387, 389 (D. Minn. 1971)
Winsby v. Walsh, 321 F. Supp. 523, 526 (C.D. Cal. 1971)
No constitutional right to a full blown administrative hearing prior to the imposition of disciplinary sanctions, such as segregated confinement, for the violation of prison rules.

(15.) Jones v. Robinson, 440 F. 2d 249, 251-52 (D.C. Cir. 1971)
Government hospital mental patient accused of a criminal act could not lawfully be transferred to the maximum security ward for the criminally insane until:
(a) the official conducting the inquiry be neutral;
(b) the official investigates—questioning all the witnesses;
(c) patient should be given an opportunity to respond to the findings.
(c) the patient is given an opportunity to respond to the findings, and if not adverse to hospital interests, patient should be able to confront his accuser and cross-examine him;
(d) the patient be provided lay representation if appropriate;
(e) there be a detailed memorandum of hearing.
Compare with, Clutchette v. Procunier, —— F. Supp. ——, No. C 70-2497 (N.D. Cal. 6-21-71)

be used against him in a future criminal prosecution for the same act (Pet.'s Brief, p. 20-21).

And from these alternate premises, counsel for petitioner suggests that:

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and Farrell v. Joel, 437 F. 2d 160, 163-164 (2nd Cir. 1971)

(16.) Manual of Correctional Standards, The American Correctional Association, Ch. 24 (Discipline), pp. 409-410 (3rd. Ed. 1966):

Hearings. A hearing should take place as soon as practicable after the offense is reported, but it is customary to schedule routine hearings at an hour that interferes as little as possible with work, sickline, etc. If the offense needs immediate investigation, it should be initiated at once and the hearing on the offense may be postponed as long as necessary to complete the investigation. If the offense is serious enough to warrant it or there is a danger that the offender will try to influence witnesses, he may be placed in segregation pending investigation and hearing, but should not be in a punishment status. In some cases inmates should be brought at once to the officials in charge of discipline for questioning.

It is desirable that the more serious or repetitious types of misconduct and offenses be thoroughly investigated. This procedure reduces the incidence of violations through the discovery and correction of bad practices or unreasonable conditions or rules which contributed to the misconduct or offense and reassures the inmate that any hearings will be impartially and fairly conducted.

At the hearing the inmate reported should be given a full opportunity to state his case and, if the offense is a serious one and he claims that

1. Haines should have been given representation by some other person; or,
2. Haines should have been advised that any statements that he made during the prison disciplinary

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witnesses could establish his innocence or bring out important mitigating factors, such claims should be carefully investigated. It is usually not wise or practical to have staff members or inmates appear as witnesses at hearings. The administrative problems involved in having staff members and inmates at the hearing and the possibility of feelings of hate and resentment by the inmate against those testifying makes this practice undesirable in most cases. The soundest practice is to have a staff member investigate and report his findings to the disciplinary officer, including statements of witnesses, where applicable, for use at the time of hearings. In short, the hearing should be an orderly attempt to arrive at the truth and is not a formal court proceeding. As much of the inmate's case history and record of adjustment as is pertinent should be taken into account and not merely his criminal history and previous infractions.

Offenders shall be provided and advised of a regular channel of appeal from the finding made or the penalty assessed at any disciplinary hearing. For example, where a subordinate officer handles routine matters, disposition may be appealed to the Disciplinary Committee. Provision should be made for the inmate to send sealed uncensored letters to the Governor, the Director or Commissioner, or his deputy, and members of the paroling authority.

B. Parole Revocations:

Compare, Washington v. Hogan, 287 F. 2d 332, 334 (3rd Cir. 1960);

hearing were insulated from use in a future criminal trial; or,

3. the prison officials should have investigated further and obtained favorable evidence from inmate Orlando (Pet.'s Brief, p. 22).

Petitioner's asumptions of law and fact are unjustified. Inherent in the problem are distinct issues. First, did the Fifth Amendment privilege against compulsory self-incrimination in a criminal proceednig protect petitioner from not having to answer the prison

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Jones v. Rivers, 338 F. 2d 862, 874 (4th Cir. 1964);
Brown v. Kearney, 355 F. 2d 199, 200 (5th Cir. 1966);
Hinkle v. Ohio Parole Authority, 419 F. 2d 130 6th Cir. 1969);
Hodge v. Markley, 339 F. 2d 973 (7th Cir. 1965);
Douglas v. Sigler, 386 F. 2d 684, 687 (8th Cir. 1967);
Morrissey v. Brewer, 443 F. 2d 942 (8th Cir. 1971);
Dunn v. California Department of Corrections, 401 F. 2d 340, 342 (9th Cir. 1968);
Alvarez v. Turner, 422 F. 2d 214 (10th Cir. 1970). 1970).
In re Tucker, —— Cal. 3rd ——, —— P. 2d —— (No. 13489, 6-24-71)
Johnson v. Stucker, 453 P. 2d 35, (Kan. 1969) cert. denied, 396 U.S. 904;
John v. State, 160 N.W. 2d 37 (N.D. 1969);
Beal v. Turner, 454 P. 2d 624 (Utah 1969);
Baxter v. Commonwealth, 9 Crim. L. Rptr. 2085 (Mass 4-5-71)
with Bey v. Board of Parole, 9 Crim. L. Rptr. 2190 (2d Cir. 5-17-71);
Bearden v. South Carolina, 443 F. 2d 1090 (4th Cir. 1971).

authorities concerning his act, which constituted a serious violation of prison rules. The answer is simply it did not. Even if the prisoner had remained silent when confronted with his act, the penitentiary could still have lawfully disciplined him for remaining silent. The Fifth Amendment privilege that "No person shall . . . be compelled in any criminal case to be a witness against himself, . . ." is not applicable to the prison disciplinary proceedings to the extent that it would have prevented the prison authorities from punishing Haines if he had failed to respond reasonably to questions directly dealing with prison matters. Gardner v. Broderick, 392 U.S. 273, 277 (1968); Uniform Sanitation Men Association v. Commissioner of Sanitation of the City of New York, 392 U. S. 280, 284 (1968); Rodriquez v. McGinnis —— F. 2d —— No. 34567, p. 4749 (2nd Cir. (3-16-71). Haines' right to be free from compulsory self-incrimination can be asserted at the time a criminal prosecution is initiated against him for the same act for which he was disciplined by the penitentiary. Garrity v. New Jersey, 385 U.S. 493 (1967). The proper method and the degree of discipline for Haines if he had remained silent when confronted specifically and directly with questions concerning prison disciplinary matters is something to be circumscribed by reasable prison rules. However, this case does not present that question, since Haines admitted prior to his disciplinary hearing that he had violated a serious prison rule. Furthermore, it can reasonably be inferred that, in this case, there was evidence other than petitioner's initial admission and his later refusal to discuss the matter.

Wihin this context the only constitutional question is whether the imposition of the prison disci-

pline for that act was arbitrarily and capriciously imposed. It is at this juncture that the second issue appears. Need the prison, to be fair in imposing discipline, inform the inmate of a right that he does not have. The answer is an obvious negative.

Finally, in deference to required fairness, should the prison authorities have appointed Haines a representative at the hearing? The facts as alleged did not, nor do prison disciplinary proceedings, per se, require representation. Prison discipline must not only be fair and non-arbitrary, to be effective it must be summary, swift and certain. The presence of counsel or a counsel substitute is not necessary within penitentiaries for fair fact resolutions.[33] It is clear in this case that petitioner's discipline for his admitted act resulted only after a carefully considered judgment by the prison officials after giving Haines an opportunity to explain his action. Both procedural and substantive due process was evident from Haines' allegations. The record before this Court presents no substantial claim pursuant to due process. The claim was properly dismissed.

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33. The suggestion that "Haines could have been afforded representation by another person who would be able to relate Haines' version of the events in question without the personal risks of incrimination" (Petr's. Br. 22) is particularly ill-conceived. Purely aside from the fact that an enunciative explanation is not likely to save a prisoner from discipline, there is no reason to believe that the prisoner's communications to his representative are privileged. Only if an attorney were representing a prisoner would confidentiality be possible and even then the revelation by the attorney of the prisoner's explanation would ordinarily constitute a waiver of the attorney client privilege.

CONCLUSION

In view of the foregoing arguments, the respondents respectfully request this Court to affirm the District Court's dismissal of petitioner's complaint.

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IN THE

Supreme Court of the United States

No. 70-5025

FRANCIS HAINES,
Petitioner,

v.

OTTO J. KERNER, FORMER GOVERNOR,
STATE OF ILLINOIS, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF OF PETITIONER

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IN THE

Supreme Court of the United States

No. 70-5025

FRANCIS HAINES,
Petitioner,

v.

OTTO J. KERNER, FORMER GOVERNOR,
STATE OF ILLINOIS, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF OF PETITIONER

ARGUMENT

Respondents, as expected, have taken the position that the action taken against Haines "was necessary to the maintenance of proper prison discipline and security." R. Br., at 8. In their attempt to support this unproven assertion, they speculate that Illinois prisoners might abuse such basic implements of personal hygiene as soap, towel, toothbrush and a bed. R. Br., at 37. It is further suggested that the State of Illinois may not be able to afford a more humane system of prison discipline. R. Br., at 38.

Significantly, no evidence has yet been introduced to show whether or not this *particular* prisoner would have misused the rudimentary essentials of decency. Cf. *Wright v. McMann*, 387 F.2d 519, 526 n. 15 (2d Cir. 1967). To deny these necessary items to all persons as a matter of course is to act arbitrarily, without rational basis, and in direct threat to inmate health—hardly a legitimate state interest. And, as the Eighth Circuit observed, in *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968), "Humane considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations." Id., at 580.

No showing has been made by Illinois officials that the use of more human alternatives, which are employed in many, if not most, other jurisdictions,[1] would be inadequate to preserve good order and discipline in Illinois prisons. In the final analysis, respondents seek refuge in the discredited "hands-off" doctrine, in order to avoid any judicial scrutiny of their patently inhumane practices.

At a minimum, prison officials must adopt "appropriate safeguards" surrounding the use of punitive techniques which pose a danger to human health. *Talley v. Stephens*, 247 F. Supp. 683, 689 (E.D. Ark. 1965). The instant record fails to reveal any Department of Correction regulations providing for adequate supervision by higher officials over lower echelon custodial personnel, cf., *Landman v. Peyton*, 370 F.2d 135, 141 (4th Cir. 1966), cert. denied, 388 U.S. 920 (1967), or requiring that due consideration be given to an inmate's physical health in connection with the use of onerous solitary confinement, or requiring some administrative finding, reviewable by a Warden or Deputy Warden, that a particular prisoner might abuse articles of personal hygiene, before such materials are deliberately withheld from him.

[1] As of the filing of this Reply Brief for Petitioner, twenty eight states had responded to our questionnaire concerning conditions of solitary confinement, with the following results:

a) 24 states responded that they still made use of solitary confinement; 4 replied that they had abandoned this practice.

Moreover, as the experience of the Eighth Circuit indicates, *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968), the use of precautionary conditions may still be insufficient to save certain practices, which are so contrary to contemporary standards[2] of decency and humanity, either generally or as applied in a particular case as here, that they would constitute cruel and unusual punishment per se.

Respondents have referred to the Manual of Correctional Standards issued by the American Correctional Association, and have apparently conceded that cells should not be completely dark[3] and that acceptable sanitary conditions should be maintained. R. Br. at 35. But, they have overlooked the following instructive passages:

> "It is a major disciplinary measure, which can have damaging effect on some inmates, and should be judiciously used when other forms of action prove inadequate. . .
>
> Few will deny that there are some prisoners who need to be segregated for a time under *humane* conditions, to permit them to settle down after expressions of uncontroled rage, or for other reasons. But to use it as a standard disciplinary action for almost the entire range of offenses is hardly a solution to

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b) All 24 states used lighted cells.

c) All 24 provided mattresses and 20 of 24 provided beds.

d) 22 of 24 provided soap; 21 of 24 provided a towel; 21 of 24 provided other elements of personal hygiene.

e) 21 of 24 allowed shave and shower at least weekly.

f) 14 of 24 provided weekly exercise; 9 of these daily.

g) 21 of 24 provided visits by a physician.

[2]Compare, *Roth v. United States*, 354 U.S. 476 (1957) ("Contemporary Community Standards" test for obscenity).

[3]Respondents' hairsplitting contention that petitioner "did allege that his cell was dark, but not completely without light," R. Br., at 38, hardly accords the liberal construction which, as respondents previously acknowledged, R. Br., at 22 n. 20, is due pro se prisoner complaints.

disciplinary problems. . . .(emphasis added). MANUAL, at 412-13.

CONCLUSION

Respondents' failure to give specific reasons for the uncivilized treatment of the petitioner in this case, compounded by their apparent lack of adequate procedural safeguards surrounding the infliction of this type of solitary confinement in Illinois, demonstrates the need for judicial scrutiny of such low visibility decisions, which are dangerous to inmate health, which constitute cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

Respectfully submitted,

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November, 1971

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*Counsel wishes to acknowledge with appreciation the able assistance in the preparation of this Reply Brief of Steven Burton, Columbia Law School, Class of 1971.

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No. 70-5025

FRANCIS HAINES,

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vs.

OTTO J. KERNER, Former Governor, State of Illinois, et al.

Respondents.

PETITION FOR REHEARING

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-5025

FRANCIS HAINES,

Petitioner,

vs.

OTTO J. KERNER, Former Governor, State of Illinois, et al.

Respondents.

PETITION FOR REHEARING

On March 8, 1971, this Court granted the petition for a writ of certiorari in this case and on January 13, 1972 reversed the judgment below. This Court concluded that:

> "Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the oportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less

stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F. 2d 774 (CA2 1944).

Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof."

The focus of the Court's opinion is not clear as to whether it applies narrowly to the pleadings in the Haines case, or is a general principle to be applied in all *pro se* suits even when the pleadings are entirely devoid of facts. The Respondents request that the Court modify its opinion so that its effect is clearly limited to cases like the instant case. If a broad reading is given to Haines, that is, if nearly all *pro se* complaints require a hearing, the opinion will only serve to dilute the *pro se* litigant's right to judicial redress.

Prior to this Court's decision in *Haines*, federal law provided three avenues for processing inmate *habeas corpus* and civil rights actions. Initially, a *pro se* complaint filed in forma pauperis (as was Haines') could be commenced with appointed counsel or dismissed if "frivolous or malicious." 28 U.S.C. § 1915 (a) and (d). If a suit was properly commenced, either in forma pauperis or not, two procedures remained: (A) The cause could be dismissed upon either a motion to dismiss (after accepting all the allegations as true) or upon a motion for summary judgment—in either case the dismissal could occur lawfully only if the pleadings failed to state a constitutional violation; (B) If the pleadings did state a constitutional claim, the case would be resolved only after the plaintiff or petitioner had an opportunity to prove

the facts as alleged in a hearing. This triparte procedure was efficient and fair. Nonmeritorious claims could be resolved without trials while complaints alleging constitutional deprivations received a full hearing with the contingent opportunity for redress.

The opinion in *Haines* v. *Kerner*, —— U.S. ——, may fairly be read to create a fourth procedure. Now, a *pro se* inmate is entitled to a trial, perhaps by a jury, even though his allegations, per se, do not state a constitutional deprivation. This step is unnecessary and improvident. The Respondents are acutely aware that State prisoners should have the opportunity to air their grievances before the courts and be given a full opportunity for redress of constitutional deprivations.[1] However, the former system provided this opportunity without the unwarranted burden on the legal process that the *Haines* opinion seemingly will create.

The opinion in *Haines* provides a rationale that may abolish the motion to dismiss in *pro se* suits. This result is unwarranted. Inmates who are serious in their claims of constitutional deprivations have ample opportunities to perfect their pleadings and to be heard without the benefit of the broad dictum in *Haines*.

Pro se inmates have adequate alternatives to aid and protect their voice before the courts. It is within the district judges' discretion to appoint free counsel. Or, the inmate may seek the aid of the many and increasing legal services available to inmates within the various states

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1. In fact, Haines took full advantage of his opportunity to plead sufficient facts to state a constitutional violation by filing two separate answering briefs to the State's Motion to Dismiss in addition to numerous other pleadings.

including Illinois. And most importantly, the pleadings of *pro se* litigants are liberally construed by the courts, redress being available upon an allegation of facts stating a constitutional violation. Lastly, the inmate has the opportunity to file an unlimited number of complaints or petitions in an attempt to state his cause of action. It should also be noted that the inmate who fails to plead properly is usually informed by the respondents' motions to dismiss as to what his pleading lacks.

In view of the alternatives available to state prison inmates seeking judicial relief for their grievances, there is no need to permit an inmate a trial if he has not initially stated a constitutional violation. When a balance is struck between judicial administration and providing prison inmates a fair chance to be heard, the *Haines* opinion creates an unmerited imbalance.

Perhaps we are misreading this Court's opinion in *Haines*. Perhaps the District Court still has the right to satisfy itself that the claim is substantial before it must conduct a hearing. See *Carey* v. *Settle*, 351 F. 2d 483, 484-485 (8th Cir. 1965); *Bethea* v. *Crouse*, 417 F. 2d 504 (10th Cir. 1969). But it appears to us that the opinion states that no matter how vague or conclusory a pleading may be, no matter how devoid of specific facts—the District Court must hold a hearing unless "it appears that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief". Simply stated, if the plaintiff could prove facts (whether or not alleged) to support his claim—a hearing must be held. We doubt that any claim is dismissable under this standard. What court can say that there is no possibility that a particular plaintiff could not prove hitherto unpleaded facts to support a claim such as "cruel and unusual punishment" or "denial of due process".

Lastly, a broad reading of *Haines* will serve neither the cause of improving prison administration nor the cause of administering justice to those with valid claims. Permitting an inmate to gain a hearing or trial without first requiring that he state a cause of action will subject the District Courts to an endless increasing stream of frivolous and repetitive lawsuits by restless, malcontented, vindictive or ignorant inmates.

Every court including this one that has a heavy workload has recognized that, if a substantial part of its cases lack merit, its capacity to deal with worthy causes is diminished. In 1967 approximately 1,600 "prisoner civil rights" cases were filed by state prisoners. In 1970 the number had grown to about 2,700 to which must be added about 850 similar petitions from federal prisoners. The approximate number of state prisoner civil rights cases for 1971 is 4,000. It is beyond dispute that the vast majority of these cases are meritless. Indeed, except for a few class actions seeking general revisions in state prison procedures,[2] nearly all these cases involve personal grievances that ought to be resolved in a small claims court. In cases under 28 U.S.C. 1331 (where the plaintiff must allege the minimum amount in controversy) the experience has been that incredible damage claims are routinely made. The petitioner here asked for damages of one-half million dollars. It seems clear to us that no court can give proper and wholehearted attention to arguable claims when they are hidden in a flood of the frivolous.

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2. These cases do not usually present substantial problems for hearings since the facts are generally not in dispute.

The Respondents submit that even an adverse decision on the merits would have been better in the long run than the broad ruling this Court apparently entered. Rulings on merits can be complied with and new procedures for discipline can be devised to meet new requirements. Once this is done, prison officials can turn from litigation to prison administration.

The present effect on the prison administration will be to cause the division of badly needed manpower from prison functions to the courthouse for hearings. Administrative actions within the prison will be taken not only on the basis that they are right but upon the basis that they are necessary so that the waste of correctional resources necessary to defend the actions are outweighed by necessity. The constant threat of trial and hearing in every case does not promote reform; it promotes inaction.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that the Court grant the Petition for Rehearing of this case.

Respectfully submitted,

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HAINES v. KERNER ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 70-5025. Argued December 6, 1971—Decided January 13, 1972

Prisoner's *pro se* complaint seeking to recover damages for claimed physical injuries and deprivation of rights in imposing disciplinary confinement should not have been dismissed without affording him the opportunity to present evidence on his claims.

427 F. 2d 71, reversed and remanded.

Stanley A. Bass, by appointment of the Court, 401 U. S. 1008, argued the cause for petitioner. With him on the briefs were *Jack Greenberg*, *James M. Nabrit III*, *William B. Turner*, *Alice Daniel*, and *Max Stern*.

Warren K. Smoot, Assistant Attorney General of Illinois, argued the cause for respondents *pro hac vice*. With him on the brief were *William J. Scott*, Attorney General, *Joel M. Flaum*, First Assistant Attorney General, and *James B. Zagel*, *Morton E. Friedman*, and *Jayne A. Carr*, Assistant Attorneys General.

Briefs of *amici curiae* were filed by *Charles H. Baron* for Boston College Center for Corrections and the Law, and by *Julian Tepper* and *Marshall J. Hartman* for the National Law Office of the National Legal Aid and Defender Assn.

PER CURIAM.

Petitioner, an inmate at the Illinois State Penitentiary, Menard, Illinois, commenced this action against the Governor of Illinois and other state officers and prison officials under the Civil Rights Act of 1871, 17 Stat. 13, 42 U. S. C. § 1983, and 28 U. S. C. § 1343 (3), seeking to recover damages for claimed injuries and deprivation of rights while incarcerated under a judgment not challenged here.

Petitioner's *pro se* complaint was premised on alleged action of prison officials placing him in solitary confinement as a disciplinary measure after he had struck another inmate on the head with a shovel following a verbal altercation. The assault by petitioner on another inmate is not denied. Petitioner's *pro se* complaint included general allegations of physical injuries suffered while in disciplinary confinement and denial of due process in the steps leading to that confinement. The claimed physical suffering was aggravation of a preexisting foot injury and a circulatory ailment caused by forcing him to sleep on the floor of his cell with only blankets.

The District Court granted respondents' motion under Rule 12 (b)(6) of the Federal Rules of Civil Procedure to dismiss the complaint for failure to state a claim upon which relief could be granted, suggesting that only under exceptional circumstances should courts inquire into the internal operations of state penitentiaries and concluding that petitioner had failed to show a deprivation of federally protected rights. The Court of Appeals affirmed, emphasizing that prison officials are vested with "wide discretion" in disciplinary matters. We granted certiorari and appointed counsel to represent petitioner. The only issue now before us is petitioner's contention that the District Court erred in dismissing his *pro se* complaint without allowing him to present evidence on his claims.

Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears

"beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley* v. *Gibson*, 355 U. S. 41, 45–46 (1957). See *Dioguardi* v. *Durning*, 139 F. 2d 774 (CA2 1944).

Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof. The judgment is reversed and the case is remanded for further proceedings consistent herewith.

Reversed and remanded.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.